



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR

### Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “*Act*”) and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on November 16, 2018, the landlord posted the Notices of Direct Request Proceeding to the door of the rental unit. The landlord had a witness sign the Proofs of Service of the Notices of Direct Request Proceeding to confirm this service. Based on the written submissions of the landlord and in accordance with sections 89(2) and 90 of the *Act*, I find that tenants have been deemed served with the Direct Request Proceeding documents, in consideration of the Order of Possession only, on November 19, 2018, the third day after their posting.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

The landlord submitted the following evidentiary material:

- Two copies of the Proofs of Service of the Notices of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on September 1, 2016, indicating a monthly rent of \$1,500.00, due on the first day of the month for a tenancy commencing on September 1, 2016;

- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$1,500.00 for outstanding rent, comprised of the balance of unpaid rent due by November 1, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated November 2, 2018, which the landlord states was served to the tenant on November 2, 2018, for \$1,500.00 in unpaid rent due on November 1, 2018, with a stated effective vacancy date of November 12, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to both of the tenants by way of posting it to the door of the rental unit on November 2, 2018. The Proof of Service form establishes that the service of the Notice was witnessed and a name and signature for the witness are included on the form. The 10 Day Notice states that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

### Analysis

I have reviewed all documentary evidence and in accordance with section 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on November 5, 2018, the third day after it was attached to the door.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,500.00 as per the tenancy agreement. I accept the evidence before me that the tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act* and did not dispute the 10 Day Notice within that 5 day period.

Based on the foregoing, I find that the tenants are conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, November 15, 2018.

In this type of matter, the landlord must prove they served the tenants with the Notice of Direct Request proceeding, with all the required inclusions, as indicated on the Notice as per Section 89 of the *Act*. Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be posted to the door of the rental unit. Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be posted to the door of the rental unit, only when considering an Order of Possession for the landlord.

For the above reason, I dismiss the monetary portion of the landlord's application against both tenants, with leave to reapply.

For the same reason identified above, the landlord's application to recover the filing fee paid for this application is dismissed without leave to reapply.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlord's application for a monetary Order for unpaid rent against both tenants with leave to reapply.

I dismiss the landlord's application to recover the filing fee paid for this application without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 21, 2018

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Residential Tenancy Branch