



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR, FFL

### 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 Proof of Service of the Notice of Direct Request Proceeding forms which declare that on November 16, 2018 the landlord served each of the tenants with the Notice of Direct Request Proceeding via registered mail. However, the landlord submitted a copy of two registered mail receipts showing this mailing in fact took place on November 19, 2018. The later date will be relied on for the purpose of this application. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service, November 24, 2018.

### 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:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on August 11, 2017, indicating a monthly rent of \$1,300.00 due on the first day of each month for a tenancy commencing on August 15, 2017;

- 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 \$1,300.00 in outstanding rent, comprised of the balance of unpaid rent due by November 1, 2018;
- An Open Item Statement dated November 14, 2018 in which the landlord details rent owing for the month of November as well as a late charge fee of \$25.00 and a credit of \$25.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated November 3, 2018, which the landlord claims was served to the tenants on November 3, 2018 for \$1,300.00 in unpaid rent due on November 1, 2018, with a stated effective vacancy date of November 13, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of posting it to the door of the rental unit on November 3, 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 Notice restates section 46(4) of the *Act* which provides that the tenants had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

### Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenants are deemed to have received the Notice three days after its posting, November 6, 2018.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,300.00, as established in the tenancy agreement. I accept the evidence before me that the tenants failed to pay rental arrears in the amount of \$1,300.00 comprised of the balance of unpaid rent owed by November 1, 2018.

I accept the landlord's undisputed evidence and find that the tenant did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that five-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 Notice, November 16, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,300.00 in unpaid rent owed for November 2018 as of November 14, 2018.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

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

Pursuant to sections 67 and 72 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$1,400.00 for unpaid rent for November 2018, and for the recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 26, 2018

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Residential Tenancy Branch