



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WIDSTEN PROPERTY MANAGEMENT INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            OPRM-DR

### 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 21, 2018, the landlord served each of the tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of each of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Section 90 of the Act determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the Act, I find that the tenants have been deemed served with the Direct Request Proceeding documents on November 26, 2018, the fifth day after their registered mailing.

### 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?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by landlords named “R.W.” and “H.W.” and the tenants on January 10, 2016, indicating a monthly rent of \$1,200.00, due on the first day of each month for a tenancy commencing on January 10, 2016;
- A property management agreement which states that the entity identified as the applicant landlord in this application for dispute resolution. has been appointed as the manager of the rental property by the owner’s named “H.G.” and “R.G.” as of June 18, 2018;

- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord sets out its basis for a monetary claim in the amount of \$600.00 for outstanding rent, comprised of the balance of unpaid rent due by November 1, 2018. The Direct Request Worksheet indicates that that total rent due as of November 1, 2018 was \$1,300.00 and the tenants submitted a partial payment of \$700.00;
- A copy of a Notice of Rent Increase dated October 24, 2016 stating a rent increase from \$1,200.00 to \$1,250.00 per month with an effective date of the rent increase being February 1, 2017;
- A copy of a Notice of Rent Increase dated December 21, 2017 stating a rent increase from \$1,250.00 to \$1,300.00 per month with an effective date of the rent increase being April 1, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) dated, November 6, 2018 which the landlord states was served to the tenants on November 6, 2018, for \$600.00 in unpaid rent due on November 1, 2018 , with a stated effective vacancy date of November 16, 2018 ; and
- A copy of the Proof of Service of the Notice form asserting that the landlord served the Notice to the tenants by way of personal service via hand-delivery on November 6, 2018. The Proof of Service form states that the service of the Notice was witnessed.

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 and find that in accordance with section 88 of the Act the tenants were duly served with the Notice on November 6, 2018.

I find that the tenancy agreement stated a rental amount of \$1,200.00. I further find that this rent was increased by \$50.00 each month from \$1,200.00 to \$1,250.00 per month by a Notice of Rent Increase dated October 24, 2016. I further find that the rent was increased an additional \$50.00 from \$1,250.00 to \$1,300.00 per month by a Notice of Rent Increase dated December 21, 2017.

Section 43 of the Act limits rent increases to an amount authorized by Section 22 of the *Residential Tenancy Regulations*. Pursuant to this authority, the maximum rent increase permitted in 2017 was 3.7% and the maximum rent increase permitted in 2018 was 4.0%. Based upon the rent of \$1,200.00 per month, the most the landlord was permitted to increase the rent in 2017 was \$44.00 per month (3.7% of \$1,200.00) and the most that landlord would have been permitted to increase the rent in 2018 was \$49.78 per month (\$1,244.00 plus 4% of \$1,244.00) for a total rent of \$1,293.78 per month in 2018.

Based upon the forgoing, I find that both of landlord's Notice of Rent Increases for 2017 and 2018 are in violation of the act and I hereby cancel both Notice of Rent Increases. However, I

find that the tenants were obligated to pay monthly rent in the amount of \$1,200.00, as established in the tenancy agreement.

In the landlord's Application for Dispute Resolution by Direct Request, the landlord provides that subsequent to receipt of the Notice, the tenants provided a partial payment of \$700.00, resulting in a balance of unpaid rent owed in the amount of \$500.00.

I accept the landlord's undisputed evidence and find that the tenants 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 section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, November 16, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession as claimed on the landlord's Application for Dispute Resolution by Direct Request. Further, I find that landlord is entitled to a Monetary Order of \$500.00 for unpaid rent.

#### 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.

Pursuant to section 67 of the Act, I find that the landlord is entitled to a monetary Order in the amount of \$500.00 for unpaid rent. The landlord is provided with these Orders in the above terms and the tenants must be served with **this Order** as soon as possible. Should the tenants 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 27, 2018

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Residential Tenancy Branch