



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            FFL 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 a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on November 23, 2018, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post customer receipt containing the tracking number to confirm this mailing. 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 tenant has been deemed served with the Direct Request Proceeding documents on November 28, 2018, the fifth day after their registered mailing.

### Issues 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

I have reviewed all written submissions and evidence before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

The landlord submitted evidentiary material including:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on November 24, 2017, indicating a monthly rent of \$2,000.00, due on the first day of each month for a tenancy commencing on December 1, 2017;

- 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 \$2,300.00 for outstanding rent, comprised of the balance of unpaid rent owed for the months encompassing the period of October 1, 2018 to November 1, 2018 (\$4,000.00) less a payment of \$1,700.00 on October 10, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) dated November 7, 2018 for \$2,300.00 in unpaid rent due on November 1, 2018 and \$859.98 in utilities following a demand made on September 28, 2018, with a stated effective vacancy date of December 21, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of registered mail on November 7, 2018. The landlord provided a copy of the Canada Post tracking number to confirm this mailing.

The Notice restates section 46(4) of the Act which provides that the tenant 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 tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

### Analysis

I have reviewed all relevant documentary evidence provided by the landlord. I note that the name of the respondent (“EJD”) in this application is not the same as that the name of the tenant on the tenancy agreement or Notice (“EJDP”). The first three names of both the tenant and the respondent are identical on these documents, as is the address of the premises in question. I find that the proper name of the respondent is “EJDP”. I elect to exercise my discretion pursuant to section 64(3)(c) of the Act, and amend the landlord’s application so that the name of the respondent reflects this.

I find that EJDP knows, or ought to reasonably know, of this proceeding and of the relief sought against him by the landlord. The Notice served at the address in question was addressed to EJDP, and the tenancy agreement lists EJDP as a tenant. This, coupled with the respondent’s receipt of the Notice of Direct Request Proceeding form, causes me to think it likely that EJDP is aware of the landlord’s application.

Section 90 of the Act provides that because the Notice was served by registered mail, the tenant is deemed to have received the Notice five days after its mailing. In accordance with sections 88 and 90 of the Act, I find that the tenant is deemed to have received the Notice on November 12, 2018, five days after its registered mailing.

I find that the tenant was obligated to pay monthly rent in the amount of \$2,000.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay the balance of rental arrears due by November 1, 2018, in the amount of \$2,300.00, comprised of the balance of unpaid rent owed for the months comprising the period of October 2018 and November 2018.

While the Notice included a claim for repayment of utilities, the landlord’s direct request worksheet makes no mention of this claim. Additionally, the landlord failed to provide a copy of a demand letter sent for payment of utilities per section 46(6) of the Act. Accordingly, I decline to

make any award on this basis (indeed, it is not clear to me that this amount remains owing at all).

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 tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, December 21, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$2,300.00 for the balance of unpaid rent owed for October 1, 2018 and November 1, 2018, as claimed on the landlord's Application for Dispute Resolution by Direct Request.

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 amend the application such that the name of the respondent is changed to the name of the tenant as set out on the Notice, with the initials EJDP.

I grant an Order of Possession to the landlord effective December 21, 2018. Should the tenant fail to comply with this Order, this Order may be filed in, 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 \$2,400.00. Should the tenant fail to comply with this Order, this Order may be filed in, and enforced as an Order of, the Small Claims Division of the Provincial Court.

The landlord is provided with these Orders in the above terms and must serve the tenant with these Orders as soon as possible.

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 30, 2018

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Residential Tenancy Branch