



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPRM – DR

### Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act (Act)* and dealt with an Application for Dispute Resolution by the landlords for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 24, 2018 the landlords served each tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5<sup>th</sup> day after it is mailed.

Based on the written submissions of the landlords, I find that each tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to Sections 46, 55, and 67 of the *Act*.

### Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on April 29, 2018 for a one year and five-day fixed term tenancy beginning on May 26, 2018 for the monthly rent of \$1,950.00 due on the 1<sup>st</sup> of each month and a security deposit of \$975.00 and a pet damage deposit of \$975.00 were paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent November 21, 2018 due to \$2,400.00 in unpaid rent.

Documentary evidence filed by the landlords indicates the tenants failed to pay the full rent owed for the months of October and November 2018 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by registered mail on November 6, 2018.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

### Analysis

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 46(5) says that if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlords. The notice is deemed to have been received by the tenants on November 11, 2018 and the effective date of the notice was November 21, 2018. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find 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.

The landlords submitted an amendment to their Application for Dispute Resolution reducing their monetary claim to \$1,950.00 indicating the tenants had made a payment on November 22, 2018 in the amount of \$450.00.

### Conclusion

I find the landlords are entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to

comply with this order the landlords may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlords are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,950.00** comprised of rent.

This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order in the Provincial Court (Small Claims) and be enforced as an order 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: December 03, 2018

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Residential Tenancy Branch