



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL OPR-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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that November 29, 2018, the landlord served the tenant with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form. The Proof of Service form also states that the service was witnessed by “SS” and a signature for “SS” is included on the form.

Based on the written submissions of the landlord, and in accordance with section 89 of the Act, I find that the tenant has been duly served with the Direct Request Proceeding documents on November 29, 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 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 January 28, 2016, indicating a monthly rent of \$1,050.00, due on the first day of each month for a tenancy commencing on March 1, 2016;

- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord sets out its claim for unpaid rent owed by November 1, 2018 in the amount of \$3,270.00, comprised of the balance of unpaid rent owed for the months encompassing the period of September 1, 2018 to November 1, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) dated November 13, 2018 for \$3,270.00 in unpaid rent due on November 1, 2018, with a stated effective vacancy date of November 23, 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 posting it to the door of the rental unit on November 13, 2018. The Proof of Service form states 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 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 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 tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the Act, I find that the tenant is deemed to have received the Notice on November 16, 2018, three days after its posting.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,050.00, as established in the tenancy agreement.

However, upon review of the direct request worksheet, it appears that, at some point, the monthly rent was increased to \$1,090.00. The landlord has submitted no evidence in support of such an increase. Accordingly, I find that for the purposes of this application, the tenant was obligated to pay monthly rent of \$1,050.00, as set out 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. However, from the amount claimed and set out on the direct request worksheet (\$3,270.00) I deduct \$120.00, representing the unproven increase in monthly rent of \$40.00 claimed by the landlord in September, October, and November 2018. I find that the balance of rental arrears the tenant has failed to pay is \$3,150.00, comprised of the balance of unpaid rent owed for those months.

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 corrected effective date of the Notice, November 26, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession based on the Notice served on the tenant for unpaid rent owed by November 1, 2018, as claimed on the landlord's Application for Dispute Resolution by Direct Request.

As the landlord was partially 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 tenant. 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 section 72 of the Act, I find that the landlord is entitled to a monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. 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: December 05, 2018

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Residential Tenancy Branch