



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## 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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on March 27, 2019, the landlords sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenants are deemed to have been served with the Direct Request Proceeding documents on April 1, 2019, the fifth day after their registered mailing.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

### Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenants on May 29, 2014, indicating a monthly rent of \$1,700.00, due on the first day of each month for a tenancy commencing on July 1, 2014;

- Two copies of Notice of Rent Increase forms showing the rent being increased from \$1,700.00 to the current monthly rent amount of \$1,830.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 3, 2019, for \$1,830.00 in unpaid rent. The 10 Day Notice provides that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of March 13, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the tenants at 1:30 pm on March 3, 2019; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy. The Direct Request Worksheet noted that \$500.00 of the \$1,830.00 identified as owing in the 10 Day Notice was paid on March 18, 2019.

### Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on March 3, 2019.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,830.00, as per the tenancy agreement and the Notices of Rent Increase.

I accept the evidence before me that the tenants have failed to pay the rent owed in full within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day 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 10 Day Notice, March 13, 2019.

Therefore, I find that the landlords are entitled to an Order of Possession for unpaid rent owing for March 2019 as of March 26, 2019.

Section 42(2) of the *Act* establishes that the landlord “must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.” Section 42(4) of the *Act* states a rent increase that does not provide the full three months takes effect on the earliest date that complies with the *Act*.

I find that the Notices of Rent Increase submitted by the landlords were issued in July and were effective for October. I find that these rent increases did not provide the three months required under the Act and that the earliest the increases could have taken effect was November 2017 and November 2018.

Furthermore, section 43(5) of the Act allows a tenant to deduct any illegally collected rent increase from the next month's rent.

I find that I am not able to determine whether the tenants started paying the increased rent in October 2017 and October 2018, and if so, whether the tenants have deducted the overpayments from subsequent months' rent.

As I am not able to confirm the precise amount of rent owing, the landlords' application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

### Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant(s). 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.

I dismiss the landlords' application for a Monetary Order for unpaid rent with leave to reapply.

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: April 03, 2019

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Residential Tenancy Branch