



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR, FFL

### 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 June 24, 2019, the landlord’s agent served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies 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 June 29, 2019, 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*?

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 and submissions relevant to the issues and findings in this matter are described in this decision.

On the landlord's Application for Dispute Resolution by Direct Request, the landlord has provided evidentiary material to demonstrate that the tenants did not pay the full monthly rent owed for the month of May 2019. The landlord seeks an Order of Possession based on unpaid rent, and a Monetary Order, based on the unpaid rent owed for the month of May 2019.

The landlord has also provided evidentiary material to demonstrate that the tenants did not pay the full monthly rent owed for the month of June 2019.

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants, indicating a monthly rent of \$1,700.00 due on the first day of each month for a tenancy commencing on November 23, 2018;
- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed by June 2019 in the amount of \$2,000.00, comprised of the balance of unpaid rent owed for the months of May 2019 and June 2019. The landlord states that the tenants provided a partial payment of rent, in the amount of \$1,400.00 on May 02, 2019, and that a balance of unpaid rent in the amount of \$300.00 remains outstanding for the month of May 2019. The landlord indicates that unpaid rent in the amount of \$1,700.00 is owed for June 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the May Notice) dated May 05, 2019, which the landlord states was served to the tenants on May 05, 2019, for \$300.00 in unpaid rent due on May 01, 2019, with a stated effective vacancy date of May 15, 2019;
- A copy of the Proof of Service of the Notice showing that the landlord's agent served the May 05, 2019 Notice to the tenants by way of personal service via hand-delivery to the tenant "GH" on May 05, 2019. The Proof of Service form establishes that the service was witnessed by "BL" and a signature for BL is included on the form;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the June Notice) dated June 01, 2019, which the landlord states was served to the tenants on June 01, 2019, for \$1,700.00 in unpaid rent due on June 01, 2019, with a stated effective vacancy date of June 10, 2019; and

- A copy of the Proof of Service of the Notice showing that the landlord's agent served the June 01, 2019 Notice to the tenants by way of posting it to the door of the rental unit on June 01, 2019. The Proof of Service form establishes 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 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 provided by the landlord and find that in accordance with section 88 of the *Act* the tenants were duly served with the May 05, 2019 Notice on May 05, 2019.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,700.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay rental arrears in the amount of \$300.00, comprised of the balance of unpaid rent owed by May 01, 2019, for the month of May 2019.

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 May 05, 2019 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 May 05, 2019 Notice, May 15, 2019.

Therefore, based on the May 05, 2019 Notice, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$300.00 for the balance of unpaid rent owed for the month of May 2019, by May 01, 2019, as claimed on the landlord's Application for Dispute Resolution by Direct Request.

With respect to the June 01, 2019 Notice, I find as follows. The tenancy agreement provided by the landlord demonstrates that the monthly rent is due on the first day of each month. Section 46 of the *Act* provides that the landlord may issue a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant after the day that rent is due. Section 46 provides, in part, the following:

### **Landlord's notice: non-payment of rent**

- 46 (1)** 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.

The application before me includes a tenancy agreement which demonstrates that the monthly rent is due on the first day of each month. Therefore, in accordance with section 46 of the *Act*, if the rent remains unpaid after the day on which it is due, the earliest opportunity for the landlord to issue a 10 Day Notice to End Tenancy for Unpaid Rent would be the following day. In the matter before me, the landlord's earliest opportunity to issue a 10 Day Notice to End Tenancy for Unpaid Rent to the tenants with respect to unpaid rent owed for June 2019 would have been on the second day of June 2019.

According to the landlord's Application for Dispute Resolution by Direct Request and the Direct Request Worksheet provided by the landlord, the landlord indicates that there is unpaid rent owed by June 01, 2019, for the month of June 2019. As the landlord issued the Notice on June 01, 2019, the same day on which the monthly rent was due for the month of June 2019, I find that the landlord has issued the 10 Day Notice to End Tenancy for Unpaid Rent to the tenants on a day earlier than permitted under section 46 of the *Act*.

Therefore, I find that the Notice to End Tenancy, dated June 01, 2019, is not in compliance with the provisions of section 46 of the *Act* and is set aside and is of no force and effect.

I dismiss the landlord's application for an Order of Possession, based on the June 01, 2019 Notice, without leave to reapply. I dismiss the landlord's application for a monetary Order with respect to unpaid rent owed for the month of June 2019, with leave to reapply.

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 grant an Order of Possession to the landlord 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.

Pursuant to sections 67 and 72 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$400.00 for unpaid rent, and for the recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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.

The 10 Day Notice of June 01, 2019 is cancelled and of no force or effect.

I dismiss the landlord's application for a monetary Order with respect to unpaid rent owed for the month of June 2019, 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: July 03, 2019

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Residential Tenancy Branch