



# Dispute Resolution Services

Page: 1

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 Proofs of Service of the Notices of Direct Request Proceeding which declare that on July 24, 2019, the landlord personally served each of the tenants the Notice of Direct Request Proceeding. The landlord had a witness sign the Proofs of Service of the Notices of Direct Request Proceeding to confirm personal service. Based on the written submissions of the landlord and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on July 24, 2019.

### 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

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and Tenant M.M. on March 1, 2018, indicating a monthly rent of \$1,200.00, due on the first day of each month for a tenancy commencing on March 1, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 3, 2019, for \$1,300.00 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 July 14, 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 on July 3, 2019; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

### 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 July 3, 2019.

Paragraph 12 (1) (b) of the Residential Tenancy Regulation establishes that a tenancy agreement is required to be “signed and dated by both the landlord and the tenant.”

I find that Tenant B.D. has not signed the tenancy agreement, which is a requirement of the direct request process. For this reason, I will only proceed with the portion of the landlord’s application naming Tenant M.M. as a respondent.

I find that Tenant M.M. was obligated to pay the monthly rent as per the tenancy agreement.

I accept the evidence before me that Tenant M.M. has 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 Tenant M.M. is 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, July 14, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of July 18, 2019.

I note that the amount of rent on the tenancy agreement (\$1,200.00) does not match the amount of rent being claimed on the 10 Day Notice (\$1,300.00). Part 3, 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”, and section 42 (3) of the *Act* states that “A notice of a rent increase must be in the approved form.”

The landlord has indicated that Tenant B.D. has agreed to pay an increased rent of \$1,300.00 as of June 1, 2019; however, the landlord has not submitted a copy of a

Notice of Rent Increase form to establish the rent was increased in accordance with the *Act*.

For this reason, the landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

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 Tenant M.M. Should Tenant M.M. **and any other occupant** 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 section 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and Tenant M.M. must be served with **this Order** as soon as possible. Should Tenant M.M. fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the landlord's 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: July 25, 2019

---

Residential Tenancy Branch