



# 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 three signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on July 23, 2018, the landlord’s served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided three 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 July 28, 2018, 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.

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenants, indicating a monthly rent of \$2,250.00 due on the first day of each month for a tenancy commencing on April 27, 2018;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$2,250.00 for outstanding rent, comprised of the balance of unpaid rent due by July 01, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated June 28, 2019, which the landlord states was served to the tenants on July 02, 2019, for \$2,250.00 in unpaid rent due on July 01, 2019, with a stated effective vacancy date of July 17, 2019;
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of registered mail on July 02, 2019. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

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.

On the Direct Request Worksheet and on the 10 Day Notice, the landlord has indicated that there remains an outstanding sum owed by the tenants with respect to unpaid utility charges owed by the tenants. However, on the landlord's Application for Dispute Resolution by Direct Request, the landlord has indicated that it seeks only an Order of Possession based on unpaid rent and a monetary Order for unpaid rent. The landlord has not selected the option to seek recovery of unpaid utility charges purportedly owed by the tenants.

Therefore, I will consider the landlord's application for a monetary Order based solely on the balance of unpaid rent claimed as being owed by the tenants. The landlord remains at liberty to file a separate Application for Dispute Resolution to seek recovery of unpaid utility charges purportedly owed by the tenants.

### Analysis

I have reviewed all relevant documentary evidence provided by the landlord. Section 90 of the Act provides that because the Notice was served by registered mail, the tenants are deemed to have received the Notice five days after its mailing. In accordance with sections 88 and 90 of the Act, I find that the tenants are deemed to have received the Notice on July 07, 2019, five days after its registered mailing.

I find that the tenants were obligated to pay monthly rent in the amount of \$2,250.00, 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 \$2,250.00, comprised of the balance of unpaid rent owed by July 01, 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 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 Notice, July 17, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$2,250.00 for unpaid rent owed by July 01, 2018, as claimed on the landlord's Application for Dispute Resolution by Direct Request.

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 \$2,350.00 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.

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 31, 2019

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Residential Tenancy Branch