



# 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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 17, 2019, the landlord personally served Tenant J.K. the Notice of Direct Request Proceeding. The landlord had Tenant J.K. and a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89(1) of the *Act*, I find that Tenant J.K. has been duly served with the Direct Request Proceeding documents on September 17, 2019.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 17, 2019, the landlord served Tenant A.J. the Notice of Direct Request Proceeding by handing the documents to Tenant J.K. The landlord had Tenant J.K. and a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89(2) of the *Act*, I find that Tenant A.J. has been duly served with the Direct Request Proceeding documents on September 17, 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 the tenants on January 17, 2018, indicating a monthly rent of \$1,700.00, due before the first day of each month for a tenancy commencing on February 1, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 2, 2019, for \$1,700.00 in unpaid rent. The 10 Day Notice provides that the tenant 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 September 12, 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 7:30 pm on September 2, 2019;
- A copy of a receipt dated September 10, 2019, for \$1,700.00 of rent, paid by the tenants, which the landlord has indicated is “for use and occupancy only”; and
- A Direct Request Worksheet.

### 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 September 2, 2019.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,700.00, as per the tenancy agreement.

I accept the evidence before me that the tenants have failed to pay the rent owed in full by September 7, 2019, 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, September 12, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of the date of this application, September 10, 2019.

The landlord submitted a copy of a receipt indicating that \$1,700.00 of the \$1,700.00 of rent indicated on the 10 Day Notice was paid on September 10, 2019. I find the rent has been paid in full and for this reason the landlord’s application for a Monetary Order for unpaid rent is dismissed without 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.

However, I note that section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be given to the tenant by leaving a copy with an adult who resides with the tenant.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be given to the tenant by leaving a copy with an adult who resides with the tenant, only when considering an Order of Possession for the landlord.

I find the landlord has served Tenant A.J. the Notice of Direct Request Proceeding by handing the documents to Tenant J.K., an adult who resides with Tenant A.J. For this reason, I find the landlord is only entitled to recover the filing fee from Tenant J.K.

### 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 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 J.K. must be served with **this Order** as soon as possible. Should Tenant J.K. 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 owing for September 2019 without 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: September 18, 2019

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Residential Tenancy Branch