



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

OPR – DR    OPUM – DR

### Introduction

This application has been made via the Direct Request Proceeding; an ex parte process pursuant to section 55(4) of the *Residential Tenancy Act* (the *Act*.)

The landlord has applied requesting an order of possession and monetary order based on unpaid rent.

The landlord submitted a proof of service document which declares that on September 27, 2019 at 8:34 p.m. the landlord attempted to personally deliver the documents to tenant C.L. The landlord submits the tenant refused to keep the documents or sign the proof of service document, which indicates the content of the package. The landlord then placed the documents in the mail box.

Residential Tenancy Branch policy #12 – Service Provisions, provides guidance in relation to service of documents by personal delivery, which reads, in part:

*This requires physically handing a copy of the document to the person being served. If the person declines to take the document, it may be left near the person so long as the person serving informs the person being served of the nature of the document being left near them.*

Based on the written submissions of the landlord agent M.D. I find that tenant C.L. has been personally served the proceeding documents on September 27, 2019 in accordance with section 89(1)(a) of the Act.

The landlord submitted a proof of service document which declares that on September 27, 2019 the proceeding documents were personally served to tenant B.C. at 8:24 p.m. The tenant signed the proof of service document, confirming receipt of the proceeding documents. Therefore, I find that tenant B.C. has been served with the proceeding documents, pursuant to section 89(1)(a) of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession based on unpaid rent?

Is the landlord entitled to a monetary order based on unpaid rent?

Background and Evidence

The landlord submitted the following documents:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on April 23, 2019, indicating a monthly rent of \$1,900.00, due on the first day of each month;
- A copy of a 10 day Notice to end tenancy for unpaid rent or utilities (the Notice) issued on August 06, 2019 with an effective date of August 19, 2019. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,900.00 within five (5) days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental unit by the date set out in the Notice unless the tenants filed an application for dispute resolution within five (5) days;
- A copy of a proof of service form signed by witness D.M. and landlord M.D. declaring the Notice was served to the tenant by leaving a copy with tenant C.L. at 7 p.m. on August 06, 2019; and
- A direct request worksheet indicating that rent in the sum of \$1,900.00 was not paid on August 01, 2019; that \$400.00 was paid on August 28, 2019, with \$1,500.00 outstanding as unpaid August 2019 rent.

Analysis

Based on the evidence before me I find that the tenants owe rent in the sum of \$1,900.00 per month, to be paid on the first day of the month.

Based on the written submission of the landlord I find, pursuant to section 88(1)(a) of the Act that the Notice was served to the tenants by personal delivery to tenant C.L. on the day of delivery, August 06, 2019.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy for unpaid rent and utilities is effective 10 days after the date that the tenant receives the Notice. As

the tenants received the Notice on August 06, 2019 when tenant C.L. was given the Notice, I find that the earliest effective date of the Notice is August 16, 2019.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice ending tenancy that required the tenants to vacate the rental unit on the effective date of the Notice; August 19, 2019, the date on the Notice.

Section 46(4) of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice ending tenancy to either pay all outstanding rent or to file an application for dispute resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenants exercised either of these rights.

Section 46(5) of the Act provides:

*(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant*

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*

*(b) must vacate the rental unit to which the notice relates by that date.*

Therefore, pursuant to section 46(5) of the Act, as there is no evidence the rent was paid in full or that the tenants disputed the Notice, I find that the tenants accepted that the tenancy has ended on the effective date of the Notice; August 19, 2019.

Pursuant to section 55(4)(a) of the Act I find that the landlord is entitled to an order of possession. The order is effective **two days after service** to the tenants. Should the tenants fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

As there is no evidence before me that the tenants paid the rent, pursuant to section 55(4)(b) of the Act I find that the landlord is entitled to compensation in the sum of \$1,500.00 in unpaid August 2019 rent owed.

Pursuant to section 72(1) of the Act I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants.

The landlord is issued a monetary order in the sum of \$1,600.00 which must be served to the tenants. Should the tenants 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.

Conclusion

The landlord is entitled to an order of possession based on unpaid rent.

The landlord is entitled to compensation for unpaid August 2019 rent.

The landlord is entitled to filing fee costs.

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: October 15, 2019

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Residential Tenancy Branch