



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPRM-DR, FFL

### Introduction

On September 16, 2019, the landlord applied for an order of possession and a monetary order by way of *ex parte* Direct Request Proceeding, pursuant to sections 47, 55, and 67 of the *Residential Tenancy Act* (the “*Act*”), and, recovery of the filing fee pursuant to section 72 of the *Act*.

The landlord submitted a Proof of Service Notice of Direct Request Proceeding which declares that on September 22, 2019, the landlord served the tenant with a Notice of Direct Request Proceeding by way of Canada Post registered mail. A copy of the Canada Post receipt and the Registered Domestic Customer Receipt, which included the CPC Tracking Number, was included in the landlord’s application. A search of the Canada Post registered mail tracking information online indicates that the Notice of Direct Request Proceeding was received by the tenant on September 26, 2019.

Based on the above, I find that the tenant was served with the Notice of Direct Request Proceedings pursuant to sections 59 and 89(1)(c) of the *Act*.

### Issues

Is the landlord entitled to (1) an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*, (2) monetary compensation for unpaid rent pursuant to section 67 of the *Act*, and (3) recovery of the filing fee pursuant to section 72 of the *Act*?

### Background and Evidence

The landlord submitted the following evidentiary material:

- (1) a copy of a residential tenancy agreement signed by the landlord and the tenant on July 24, 2019, indicating a monthly rent of \$1,800.00, due on the first day of the month for a tenancy commencing August 1, 2019;

- (2) a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) signed and dated September 2, 2019, for \$1,800.00 in unpaid rent that was due on September 1, 2019. The 10 Day Notice provided that the tenant had five days from the date of service to pay the rent or file an Application for Dispute Resolution, or, that the tenancy would end on a stated effective vacancy date of September 12, 2019;
- (3) a copy of a witnessed Proof of Service of the 10 Day Notice which indicates that a copy of the 10 Day Notice was served on the tenant by “Attaching a copy on the door” of the rental unit at 9:25 AM on September 2, 2019; and
- (4) a Direct Request Worksheet summarizing the \$1,800.00 in unpaid rent.

### Analysis

Direct request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability of the tenant to participate, there is a much higher burden placed on landlord in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

Regarding rent, section 26 of the *Act* requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or some of the rent. Pursuant to section 46 of the *Act*, the 10 Day Notice informed the tenant that the 10 Day Notice would be cancelled if they paid rent within five days of service. The 10 Day Notice also explains that the tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The landlord provided documentary evidence to support their submission and application that the tenant did not pay rent when it was due. Further, there is no evidence before me that the tenant applied to cancel the 10 Day Notice.

Taking into consideration the landlord’s written submissions and the documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for an order of possession and for a monetary order in the amount of \$1,800.00. As the landlord was

successful in this claim, they are entitled to recover the \$100.00 filing fee. Thus, I grant the landlord a monetary order in the amount of \$1,900.00.

Subsection 55(2)(c) of the Act states that a landlord may request an order of possession of a rental unit when a notice to end the tenancy has been given by the landlord, and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired. Thus, applying section 55 of the Act, pursuant to sections 46 and 55 of the Act, I hereby grant an order of possession to the landlord. This order is effective two days after service upon the tenant.

As an aside, the landlord should be aware that fixed-term tenancy agreements, such as the one submitted into evidence in this application, are subject to strict requirements under section 13.1 of the *Residential Tenancy Regulation*. The reason stated in the tenancy agreement—"end of tenancy"—is not, as written, a permitted reason that a tenancy may end. I encourage the landlord to familiarize themselves with section 49(3) of the *Act*. That having been said, this error in the tenancy agreement does not otherwise nullify the landlord's present claim.

### Conclusion

I grant the landlord an order of possession, which must be served on the tenant and is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I grant the landlord a monetary order in the amount of \$1,900, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia, Small Claims Division.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1 of the *Act*.

Dated: October 3, 2019

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Residential Tenancy Branch