



# 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 Proof of Service Notice of Direct Request Proceeding which declares that on September 22, 2019, the landlord served the tenants each with a Notice of Direct Request Proceeding by attaching the copies to the door of the rental unit.

### 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) recover the filing fee for this application 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 tenants on April 11, 2019, indicating a monthly rent of \$2,850.00, due on the first day of the month for a tenancy commencing April 12, 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 4, 2019, for \$2,850.00 in unpaid rent that

was due on September 1, 2019. The 10 Day Notice provides that the tenants 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 15, 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 left with the tenants at 7:37 PM on September 19, 2019; and
- (4) a Direct Request Worksheet showing the rent owing during the relevant portion of the tenancy.

### 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.

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 tenants that the Notice would be cancelled if they paid rent within five days of service. The Notice also explains that the tenants 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 tenants did not pay rent when it was due. Further, there is no evidence before me that the tenants applied to cancel the Notice.

Taking into consideration all 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 \$2,850.00. These are so ordered.

As the landlord was successful in this claim, I find that the landlord is also entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenants 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 hereby grant the landlord a monetary order in the amount of \$2,950.00, which must be served on the tenants. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

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