



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **INTERIM 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 24, 2019 the landlord served the tenant notice of the direct request proceeding by registered mail to the rental unit address.

The landlord provided a copy of a Canada Post receipt and tracking number as confirmation of service to the tenant.

Based on the written submissions of the landlord I find that the tenant has been served the proceeding documents in accordance with section 89(2)(b) of the *Act*.

In accordance with section 90(a) of the *Act* I find that the tenant is deemed served with notice of the Direct Request Proceeding effective the 5<sup>th</sup> day after mailing; September 29, 2019.

### 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 tenant on May 01, 2019, indicating rent of \$900.00. The tenancy agreement indicates that rent is payable each day. Further, the tenancy agreement is silent on the first day of the term and whether the term is daily, weekly or monthly.

A copy of a 10 day Notice to end tenancy for unpaid rent or utilities (the Notice) issued on September 03, 2019 is supplied as evidence. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,850.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental unit by the date set out in the Notice unless the tenant filed an application for dispute resolution within five days.

The landlord has submitted a proof of service document indicating that the Notice was personally served on September 04, 2019. The landlord has submitted a photograph of the Notice, posted to a door.

### Analysis

The Direct Request Proceeding is an ex parte process where the tenant is not provided with an opportunity to attend a hearing or make a rebuttal to the claim. The onus is on the landlord applicant to present evidentiary material that does not lend itself to ambiguity or give rise to issues that may require further clarification. If the evidence supplied by the landlord fails to meet the standard for an ex parte proceeding, the application will fail. The result may be a hearing, dismissal or dismissal with leave to reapply.

I find that the tenancy agreement supplied as evidence fails to provide clarity on the term of the tenancy agreement and the date rent is due. The method of service of the Notice is not clearly stated, as there is a photograph of the Notice posted to a door, while the proof of service indicates the tenant was personally served the Notice.

Therefore, I order that the Direct Request Proceeding be convened to a participatory hearing, in accordance with section 74 of the *Act*. A participatory hearing, conducted by an arbitrator appointed under the *Act*, is required in order to determine all factors required in support of the application.

### **READ THE FOLLOWING CAREFULLY:**

**Notices of the time and date of the hearing are included with this Direct Request Proceeding decision for the LANDLORD to serve to the TENANT within three (3) days of receipt of this Direct Request Proceeding decision.**

At the same time as the Notice of Hearing is served the **LANDLORD** must serve a copy of this Direct Request Proceeding decision to the **TENANT**.

**Each party** must serve the other and the Residential Tenancy Branch with any evidence that they intend to rely upon at the hearing. At the hearing both parties will be required to provide proof of service of documents as ordered.

Fact sheets are available at <http://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/information-sheets/rtb114.pdf> that explain evidence and service requirements.

For more information see our website at: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant)  
If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

**Lower Mainland:** 604-660-1020

**Victoria:** 250-387-1602

**Elsewhere in BC:** 1-800-665-8779

Failure to attend the hearing at the scheduled time and to meet deadlines for the submission and service of evidence may result in a decision being made on the basis of information before the arbitrator and the testimony of the party in attendance at the hearing.

### Conclusion

The application is adjourned to a participatory hearing.

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 07, 2019

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Residential Tenancy Branch