



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NANAIMO AFFORDABLE HOUSING  
SOCIETY and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPRM-DR

### Introduction

On September 25, 2019, the landlord applied for an order of possession by way of *ex parte* Direct Request Proceeding pursuant to section 55 of the *Residential Tenancy Act* (the “*Act*”).

The landlord submitted a Proof of Service Notice of Direct Request Proceeding which declares that on October 8, 2019, the landlord served the tenant with a Notice of Direct Request Proceeding by attaching a copy of it to the door of the rental unit, specifically, “CENTER OF FRONT DOOR TO UNIT.”

Based on the foregoing evidence, I find that the tenant was served with the Notice of Direct Request Proceedings pursuant to section 89 of the *Act*.

### Issue

Is the landlord entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

### Background and Evidence

The landlord submitted the following evidentiary material:

- (1) a copy of a residential tenancy agreement signed by the tenant and the landlord’s agent on December 29, 2017, and which indicated a monthly rent of \$715.00 due on the first day of the month for a tenancy commencing on or after December 29, 2017 (I note that the tenancy agreement, rather oddly, does not indicate an actual tenancy commencement date);

- (2) a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) served on September 5, 2019 for overdue rent in the amount of \$2,686.00 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 September 18, 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 being attached to the door of the rental unit on September 5, 2019 at 12:26 PM, specifically, “Left in door jam [sic] above door handle”; and
- (4) a Direct Request Worksheet which tabulates the amount of 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.

Section 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, when the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

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 all the documentary evidence presented before me, and applying section 55 of the *Act*, I therefore grant an order of possession to the landlord.

Conclusion

I hereby 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.

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 11, 2019

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Residential Tenancy Branch