



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Action Property Management  
and [tenant name suppressed to protect privacy]

## **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 signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 25, 2019, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on October 30, 2018, the fifth day after their registered mailing.

### Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on August 30, 2018, indicating a monthly rent of \$500.00, due on the first day of each month for a tenancy commencing on September 01, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 02, 2019, for \$790.68 in unpaid rent and late fee. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of October 16, 2019;
- A copy of the Proof of Service of the Notice form showing that the landlord served the Notice to the tenant by way of posting it to the door of the rental unit on October 02, 2019. The Proof of Service form establishes that the service of the Notice was witnessed and a name and signature for the witness are included on the form; and
- A Direct Request Worksheet showing the rent owing during the relevant portion of this tenancy, and a statement. The landlord indicates that a balance of unpaid rent and late payment fee in the amount of \$790.68 is owed by October 03, 2019.

### Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the Act provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the Act, I find that the tenant is deemed to have received the Notice on October 05, 2019, three days after its posting.

I find that the tenant was obligated to pay monthly rent in the amount of \$500.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$765.68, comprised of the balance of unpaid rent owed by October 23, 2019.

As part of the monetary claim established on the landlord's Application for Dispute Resolution by Direct Request and on the Direct Request worksheet, the landlord has included a fee for which reimbursement cannot be sought by way of the Direct Request process. The landlord has added to the monetary claim unpaid charges arising from a late payment fee, in the amount of \$25.00. As reimbursement for additional fees, such as late payment fees, cannot be sought by way of the Direct Request process, I will address only the portion of the monetary claim which arises from unpaid rent owed by October 23, 2019.

I note the landlord remains at liberty to file a separate Application for Dispute Resolution seeking to recover any late payment fees owed under the tenancy.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five day period.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, October 16, 2019, pursuant to section 53(2) of the *Act*.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$765.68, the amount for the balance of unpaid rent owed by October 01, 2019, as of October 23, 2019, the date on which the landlord's Application for Dispute Resolution by Direct Request was submitted.

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

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$865.68 for unpaid rent, and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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

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: November 04, 2019

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Residential Tenancy Branch