



# 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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on December 19, 2019, the landlord’s agent served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. 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 tenants have been deemed served with the Direct Request Proceeding documents on December 24, 2019, 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

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

On the landlord's Application for Dispute Resolution by Direct Request, the landlord seeks an Order of Possession based on unpaid rent and a Monetary Order for unpaid rent in the amount of \$2,450.00.

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenants, indicating a monthly rent of \$1,225.00 due on the first day of each month for a tenancy commencing on August 01, 2019;
- A Direct Request Worksheet showing the rent owing during the relevant portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed in the amount of \$2,450.00, comprised of the balance of unpaid rent due by December 01, 2019. The landlord indicates that unpaid rent is owed in the amount of \$1,225.00 for each of October 2019 and December 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated November 27, 2019, which the landlord states was served to the tenants on November 27, 2019, for \$1,225.00 in unpaid rent due on October 01, 2019, with a stated effective vacancy date of December 07, 2019;
- A copy of the Proof of Service of the Notice showing that the landlord's agent served the Notice to the tenants by way of personal service via hand-delivery to the tenant "C.I.D" on November 27, 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 copy of a document from a financial institution which demonstrates that a cheque issued by the tenant and addressed to the landlord, dated October 20, 2019, in the amount of \$1,250.00, was returned due to insufficient funds.

The Notice restates section 46(4) of the Act which provides that the tenants had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

### Analysis

I have reviewed all documentary evidence provided by the landlord and find that in accordance with section 88 of the *Act* the tenants were duly served with the Notice on November 27, 2019.

In a Direct Request proceeding, a landlord cannot pursue unpaid rent owed for a period beyond the due date for unpaid rent listed on the Notice issued to the tenant, in this case, October 01, 2019. Therefore, within the purview of the Direct Request process, I cannot consider the portion of the rental arrears arising from unpaid rent owed for the month of December 2019, and will therefore make a determination based on the amount of unpaid rent indicated as being due by October 01, 2019, as indicated on the Notice provided to the tenant.

Based on the foregoing, I dismiss the portion of the landlord's monetary claim for unpaid rent owing for the month of December 2019, with leave to reapply. I will only consider the landlord's application for a monetary Order related to unpaid rent arising from the November 27, 2019 Notice issued to the tenant, which alerted the tenant to unpaid rent due by October 01, 2019.

According to the Direct Request worksheet provided by the landlord, the tenants were required to pay \$1,225.00 by October 01, 2019. The landlord indicated on the Direct Request worksheet that unpaid rent in the amount of \$1,225.00 due by October 01, 2019 remains outstanding.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,225.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay rental arrears in the amount of \$1,225.00, comprised of the balance of unpaid rent owed by October 01, 2019.

I accept the landlord's undisputed evidence and find that the tenants did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that five-day period.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice, December 07, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,225.00 for unpaid rent owed by October 01, 2019, as claimed on the landlord's Application for Dispute Resolution by Direct Request.

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(s). Should the tenant(s) 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 find that the landlord is entitled to a monetary Order in the amount of \$1,325.00 for unpaid rent, and for the recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the portion of the landlord's monetary claim for unpaid rent owing for the month of December 2019, with leave to reapply.

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: January 02, 2020

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Residential Tenancy Branch