



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-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.

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on January 29, 2020 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 February 03, 2020, 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 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.

The landlord submitted, in part, 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 \$1,800.00 due on the first day of each month for a tenancy commencing on May 15, 2018;
- Copies of "Notice of Rent Increase" forms, provided to the tenant during the course of the tenancy, which demonstrate that the monthly rent was increased to the current amount of \$1,845.00, effective June 01, 2019.
- A Direct Request Worksheet, with an accompanying rental ledger, showing the rent owing and paid during the relevant portion of this tenancy in question, on which the landlord establishes that as of January 06, 2020, there was unpaid rent owed in the amount of \$500.00, comprised of the cumulative balance of unpaid rent due by January 01, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated January 08, 2020, which the landlord states was served to the tenants on January 08, 2020, for \$500.00 in unpaid rent due on January 01, 2020, with a stated effective vacancy date of January 19, 2020;
- A copy of the Proof of Service of the Notice form showing that the landlord served the Notice to the tenants by way of registered mail on January 08, 2020. The landlord provided a copy of the Canada Post Customer Receipt and transaction receipt containing the Tracking Number to confirm this mailing; and
- A copy of a receipt, dated January 21, 2020, which demonstrates that the tenants provided a partial payment of rent in the amount of \$500.00 toward rent owed for the month of January 2020, which was acknowledged by the landlord as being received for use and occupancy only. The receipt indicated that the payment would not cancel the January 08, 2020 Notice.

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.

The applicant landlord provided documentary evidence to show that it purchased the residential property in which the rental unit is located from the landlord listed in the tenancy agreement, thereby demonstrating that the applicant landlord inherited the tenancy from the original landlord.

### Analysis

I have reviewed all relevant documentary evidence provided by the landlord. Section 90 of the Act provides that because the Notice was served by registered mail, the tenants are deemed to have received the Notice five days after its mailing. In accordance with sections 88 and 90 of the Act, I find that the tenants are deemed to have received the Notice on January 13, 2020, five days after its registered mailing.

I find that as of June 01, 2019, the tenants were obligated to pay monthly rent in the amount of \$1,845.00, as the landlord has established that the monthly rent amount was increased from the initial amount as established in the tenancy agreement, to the current amount of \$1,845.00, as per the Notice of Rent Increase forms.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,845.00, and accept the evidence before me that the tenants had failed to pay cumulative rental arrears in the amount of \$500.00, comprised of the balance of unpaid rent owed by January 06, 2020.

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.

I accept the landlord's undisputed evidence before me that the tenants failed to pay the rent owed in full by January 18, 2020, 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. The documentary evidence indicates that the tenants provided a late payment in the amount of \$500.00 on January 21, 2020, which the landlord accepted for use and occupancy only, in order to pay the full outstanding rent which was due by January 01, 2020. However, as the outstanding rent was not paid within five days of receipt of the Notice, in accordance with section 46(4) of the *Act*, it remains open for the landlord to pursue an Order of Possession.

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 corrected effective date of the Notice, January 23, 2020, pursuant to section 53(2) of the *Act*.

Therefore, I find that the landlord is entitled to an Order of Possession based on the January 08, 2020 Notice served to the tenant for unpaid rent owed by January 01, 2020, 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 section 72 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$100.00 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.

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: February 05, 2020

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Residential Tenancy Branch