



# 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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 5, 2020, the landlord sent Tenant A.S. the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that Tenant A.S. is deemed to have been served with the Direct Request Proceeding documents on March 10, 2020, the fifth day after their registered mailing.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 5, 2020, the landlord sent Tenant S.S. the Notice of Direct Request Proceeding by registered mail to an address that is not the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding with all the required inclusions as indicated on the Notice as per section 89 of the *Act* which permits service by sending a copy by registered mail to the address at which the person resides or, by sending a copy by registered mail to a forwarding address provided by the tenant.

I find that the landlord has not sent the Notice of Direct Request Proceeding to Tenant S.S. at the rental unit established in the tenancy agreement. There is also no indication as to whether Tenant S.S. resides at this alternative address or whether they have provided the landlord this address for service of documents.

I find I am not able to confirm service of the Notice of Direct Request Proceeding to Tenant S.S. and for this reason I will only proceed with the portion of the landlord's application naming Tenant A.S. as a respondent.

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.

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on December 28, 2017, indicating a monthly rent of \$1,024.00, due on the first day of each month for a tenancy commencing on February 1, 2018;
- A copy of two Notice of Rent Increase forms showing the rent being increased from \$1,024.00 to the current monthly rent amount of \$1,076.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 2, 2020, for \$1,076.00 in unpaid rent. The 10 Day Notice provides that Tenant A.S. 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 February 10, 2020;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants' door at 8:30 pm on February 2, 2020; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

### Analysis

I have reviewed all documentary evidence and I find that Tenant A.S. was obligated to pay the monthly rent in the amount of \$1,076.00, as per the tenancy agreement and the Notices of Rent Increase.

In accordance with sections 88 and 90 of the *Act*, I find that Tenant A.S. was deemed served with the 10 Day Notice on February 5, 2020, three days after its posting.

I accept the evidence before me that Tenant A.S. 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 Tenant A.S. is conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, February 15, 2020.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$1,076.00, the amount claimed by the landlord for unpaid rent owing for February 2020, as of the date of this application, February 20, 2020.

As the landlord was partially 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 Tenant A.S. Should Tenant A.S. **and any other occupant** 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 \$1,176.00 for rent owed for February 2020 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and Tenant A.S. must be served with **this Order** as soon as possible. Should Tenant A.S. 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.

I dismiss the portion of the landlord's application for a Monetary Order naming Tenant S.S. as a respondent without 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: March 12, 2020

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Residential Tenancy Branch