



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **INTERIM DECISION**

Dispute Codes      OPRM-DR

### 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 landlords (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 form which declares that on March 27, 2020 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 April 01, 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 monetary compensation for unpaid rent pursuant to section 67 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.

As part of their evidentiary package, the landlord submitted a hand-written letter from the tenant in which the tenant counters statements made by the original landlord "KS" in her email dated November 13, 2019. KS asserted that the tenant was paid \$50.00 per month in exchange for services he provided, such as cleaning the hall and stairwell. KS stated that the tenant owes a balance of unpaid rent in the amount of \$1,070.00.

The tenant stated that the landlord agreed to reduce his rent by \$50.00 each month in exchange for maintenance work he conducted. The tenant asserted that he does not owe the sum of unpaid rent as asserted by KS. The tenant also provided that his monthly rent owed under the tenancy was \$525.00 and that the parties had not signed a written tenancy agreement. The tenant asserted that he signed a written agreement shortly after KS sold the property which comprises the rental unit and that he did so without reviewing the document. The tenant asserted that the information reflected in the tenancy agreement is not correct.

The applicant landlords provided a copy of the written agreement referenced above, which is a copy of a residential tenancy agreement which was signed by the original landlord and the tenant, indicating a monthly rent of \$585.00, due on the first day of each month for a tenancy commencing on August 01, 2017.

### 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 for the tenants to participate, there is a much higher burden placed on landlords 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.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

Within the Direct Request process, the tenancy agreement is considered to be a vital document which establishes the parties to the tenancy agreement, the correct address of the rental unit, and the details agreed upon by the parties to the agreement, such as

the day in the month on which the rent is due, and the correct amount of rent due with respect to the tenancy.

“Policy Guideline #39, Direct Requests” provides the guidelines which govern the Direct Request process. The guideline provides that the onus is on the landlord to ensure that they have included all required documents necessary for an application for dispute resolution via the Direct Request process. Policy Guideline #39 establishes that the landlord must provide, when making an application for dispute resolution, a copy of the tenancy agreement. I find that the landlord has provided a copy of a tenancy agreement which may not be in accordance with section 13 of the *Act*. Section 13 of the *Act* provides, in part, the following with respect to the requirements for tenancy agreements:

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(f) the agreed terms in respect of the following:

(iv) the amount of rent payable for a specified period

As previously indicated, in an ex parte Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding.

Based on the evidentiary material provided by the landlords, and specifically, based on the written statements provided by both the tenant and the original landlord KS, I find that there exists uncertainty as to the correct amount of rent owed with respect to the tenancy. Although the copy of the written tenancy agreement provides that monthly rent in the amount of \$585.00 is owed each month, the statements provided by KS and the tenant respectively suggest that the tenant was entitled to a rent reduction each month in the amount of \$50.00, which was conditional and necessitated that he perform maintenance work, such as cleaning. Additionally, the tenant asserted that prior to the new landlords purchasing the rental unit, his base monthly rent was lower, in the amount of \$525.00, and not \$585.00 as stated in the tenancy agreement.

I find that the evidentiary material presented by the landlord brings into question the correct amount of rental arrears owed by the tenant and the correct amount of rent owed each month.

I find that there are deficiencies with this application, as outlined above, which cannot be clarified within the narrow scope of a Direct Request Proceeding. These deficiencies cannot be remedied by inferences in the absence of more evidentiary material, or oral testimony, which may clarify the questions raised by these inconsistencies.

I find that a participatory hearing will provide the proper venue to make a determination on these issues and to hear the landlord's request for an Order of Possession and a monetary Order.

### Conclusion

I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. I find that a participatory hearing to be conducted by an Arbitrator appointed under the *Act* is required in order to determine the details of the landlord's application.

**Notices of Reconvened Hearing are enclosed with this interim decision for the applicant to serve, with all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 89 of the *Act*.**

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. For more information see our website at: [gov.bc.ca/landlordtenant](http://gov.bc.ca/landlordtenant).

If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

**Lower Mainland:** 604-660-1020  
**Elsewhere in BC:** 1-800-665-8779

This interim 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: April 07, 2020

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Residential Tenancy Branch