



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR-PP, 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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted one signed Proof of Service Notice of Direct Request Proceeding form which declares that on November 21, 2020, the landlords sent the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of three Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenants are deemed to have been served with the Direct Request Proceeding documents on November 26, 2020, the fifth day after their registered mailing.

### Issue(s) to be Decided

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

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords 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 landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenants on January 16, 2020, indicating a monthly rent of \$2,600.00, due on the first day of each month for a tenancy commencing on February 1, 2020;
- A copy of a Repayment Plan dated October 1, 2020 indicating the tenants would be responsible for repayment of affected rent in monthly installments of \$3,175.00 starting on November 1, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated November 4, 2020, for \$1,175.00 in unpaid rent. The 10 Day Notice provides that the tenants 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 November 18, 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 5:14 pm on November 4, 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 the tenants were obligated to pay the monthly rent in the amount of \$2,600.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on November 7, 2020, three days after its posting.

I accept the evidence before me that the tenants have 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 tenants are 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, November 18, 2020.

Therefore, I find that the landlords are entitled to an Order of Possession for unpaid rent as of the date of this application, November 13, 2020.

Policy Guideline #52 provides the following information pertaining to repayment plans:

*"The repayment period starts on the date the repayment plan is given by the landlord to the tenant and ends on July 10, 2021..."*

*A landlord and tenant may mutually agree **in writing** to extend the repayment period so that the tenant will pay the affected rent over more installments.”*

The landlords submitted a copy of a Repayment Plan showing the tenants would pay installments until August 1, 2021. However, I find the landlords have not submitted a copy of a document containing the tenants' signatures to demonstrate the tenants consented in writing, to this extended repayment plan.

I also note that the amount of rent listed on the 10 Day Notice (\$1,175.00) does not match the total amount requested by the landlords (\$6,050.00).

I find I am not able to confirm the precise details of the landlords' monetary claim and for this reason, the landlords' application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

As the landlords were partially successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I grant an Order of Possession to the landlords 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 grant the landlords a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlords are provided with this Order 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 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 landlord's application for a Monetary Order for unpaid rent 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: December 11, 2020

---

Residential Tenancy Branch