



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, 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 a signed Proof of Service Notice of Direct Request Proceeding which declares that on November 27, 2020, the landlords served the tenant the Notice of Direct Request Proceeding by handing the documents to Person J.G., the tenant's spouse. The landlords had a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm this service. Based on the written submissions of the landlords and in accordance with section 89(2) of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on November 27, 2020.

### 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 landlord and the tenant on August 5, 2019, indicating a monthly rent of \$1,950.00, due on the first day of each month for a tenancy commencing on August 15, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated November 10, 2020, for \$3,900.00 in unpaid rent. The 10 Day Notice provides that the tenant 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 19, 2020;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was handed to the tenant's spouse at 9:30 pm on November 10, 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 tenant was obligated to pay the monthly rent in the amount of \$1,950.00, as per the tenancy agreement.

In accordance with section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on November 10, 2020.

I accept the evidence before me that the tenant 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 the tenant 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, November 20, 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 17, 2020.

In this type of matter, the landlords 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*.

Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be given to the tenant by leaving a copy with an adult who resides with the tenant.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be given to the tenant by leaving a copy with an adult who resides with the tenant, only when considering an Order of Possession for the landlord.

I find that the landlords have served the Notice of Direct Request Proceeding to the tenant by leaving a copy with an adult who resides with the tenant, and for this reason, the monetary portion of the landlords' application concerning unpaid rent is dismissed, with leave to reapply.

For the same reason listed above, the monetary portion of the landlords' application to recover the filing fee for this application is dismissed, without leave to reapply.

### Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlords' application for a Monetary Order for unpaid rent with leave to reapply.

I dismiss the landlords' application to recover the filing fee paid for this application 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: December 14, 2020

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Residential Tenancy Branch