



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Wakesiah Apts Inc  
and [tenant name suppressed to protect privacy]

## **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 landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on November 17, 2020, the landlord personally served the tenant the Notice of Direct Request Proceeding. The landlord had the tenant sign the Proof of Service Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on November 17, 2020.

### 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 tenant on July 7, 2019, indicating a monthly rent of \$1,400.00, due on the first day of each month for a tenancy commencing on August 1, 2019;
- A copy of a Repayment Plan dated August 25, 2020 indicating the tenant would be responsible for repayment of affected rent in monthly installments of \$233.33 starting on October 1, 2020 and ending on September 1, 2021;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 5, 2020, for \$1,616.00 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 October 15, 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 tenant's door at 4:00 pm on October 5, 2020; and
- A Direct Request Worksheet and ledger showing the rent owing and paid during the relevant portion of this tenancy. The Direct Request Worksheet and ledger noted that, of the \$1,400.00 of rent for October 2020 listed as owing on the 10 Day Notice, the tenant made payments of \$400.00 on October 5, 2020 and \$750.00 on October 30, 2020.

### Analysis

I have reviewed all documentary evidence and I find that the tenant was obligated to pay the monthly rent in the amount of \$1,400.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on October 8, 2020, three days after its posting.

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, October 18, 2020.

In a Direct Request Proceeding, a landlord cannot pursue rent owed for a period beyond the date on which the Notice was issued to the tenant. The 10 Day Notice was issued to the tenant on October 5, 2020. Therefore, within the purview of the Direct Request process, I cannot hear the monetary portion of the landlord's application for rent owed for November 2020.

Policy Guideline #52 provides the following information pertaining to the *COVID-19 Related Measures Act (the C-19 Act)*:

*“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 amend the terms of a repayment plan to extend the repayment period so that the tenant will pay the affected rent over more installments.”*

The landlord submitted a copy of a Repayment Plan showing the tenant would pay monthly installments from October 1, 2020 to September 1, 2021, past the repayment end date established in Policy Guideline #52.

However, I find the landlord has not submitted a copy of a document containing the tenant's signature to demonstrate the tenant consented in writing, to this longer repayment schedule.

I find I am not able to confirm the validity of the Repayment Plan submitted by the landlord and for this reason, I cannot consider the portion of the landlord's application for a Monetary Order related to affected rent.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$250.00, the amount claimed by the landlord for unpaid rent owing for October 2020, as of the date of this application, November 7, 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 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.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$350.00 for rent owed for October 2020 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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 owing for November 2020 with leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid affected 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 17, 2020

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Residential Tenancy Branch