



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes OPRM-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 filed by the Landlord for an order of possession and a monetary order based on unpaid rent, and an order granting recovery of the filing fee.

The Landlord submitted a signed Proof of Service - Notice of Direct Request Proceeding document which declares that the Landlord served the Tenant with the Notice of Direct Request Proceeding and supporting documents by registered mail on December 23, 2020. The Landlord provided copies of the Canada Post receipts 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 the Tenant is deemed to have received these documents on December 28, 2020, five days after they were mailed.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. Is the Landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?
3. 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 March 16 and March 14, 2020, respectively, indicating a monthly rent of \$2,608.00, due on the first day of each month for a month-to-month tenancy commencing on April 1, 2020;
- A copy of a residential tenancy agreement which was signed by the Landlord and the Tenant on May 7 and May 6, 2019, respectively, indicating a monthly rent of \$2,542.00, due on the first day of each month for a fixed-term tenancy commencing on April 1, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2020 (the “10 Day Notice”), for \$3,298.00 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 December 12, 2020;
- A copy of a Proof of Service - Notice to End Tenancy form which indicates that the 10 Day Notice was served on the Tenant by registered mail on December 2, 2020. Service in this manner was supported by Canada Post receipts including the Tracking Number; and
- A copy of a Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy;
- A copy of a Repayment Plan indicating an additional repayment amount of \$756.00 per month in effect for the period from October 1, 2020 to July 31, 2021.



### Analysis

I have reviewed all documentary evidence and I find that the Tenant was obligated to pay base rent on a monthly basis, plus a repayment amount of \$756.00 per month. However, I note that the amount of rent due on December 1, 2020, pursuant to the month-to-month tenancy agreement in effect from April 1, 2020, does not match the amount of rent being claimed on the 10 Day Notice or on the Direct Request Worksheet. Rather, the amount of rent claimed corresponds to the amount of rent due under the fixed-term tenancy agreement which ended on March 31, 2020. If there has been a rent increase, the appropriate Notice of Rent Increase forms must be submitted with the Application for Dispute Resolution to substantiate the claim for the increased rent. The application and supporting documents correctly set out the additional rent due pursuant to the Repayment Plan.

I find I am not able to determine the amount of rent owing and for this reason the Landlord's application for a monetary order for unpaid rent is dismissed with leave to reapply.

Concerning the Landlord's request for an order of possession, and in accordance with sections 88 and 90 of the *Act*, I find that the Tenant is deemed to have received the 10 Day Notice on December 7, 2020, five days after it was mailed.

I also accept the evidence before me that the Tenant 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 December 17, 2020, the corrected effective date of the 10 Day Notice.

Therefore, I find the Landlord is entitled to an order of possession which will be effective two days after it is served on the Tenant.

As the Landlord is successful, I find they are also entitled to a monetary award in the amount of \$100.00 in recovery of the filing fee paid to make the application.



Conclusion

The Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply.

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$100.00 in recovery of the filing fee for this application. The monetary order must be served on the Tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: January 13, 2021

---

Residential Tenancy Branch