



# 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 a signed Proof of Service Notice of Direct Request Proceeding which declares that on January 1, 2020, the landlords personally served the tenant the Notice of Direct Request Proceeding. The landlords had the tenant and a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm personal service.

The landlords have indicated that the Notice of Direct Request Proceeding was served to the tenant on January 1, 2020. However, I find that the Notice of Direct Request Proceeding documents were not made available for service until December 31, 2020.

For this reason 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 January 1, 2021.

### 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 on September 30, 2018 and the tenant on October 2, 2018, indicating a monthly rent of \$2,200.00, due on the first day of each month for a tenancy commencing on October 1, 2018;
- A copy of a Repayment Plan dated September 1, 2020 indicating the tenant would be responsible for repayment of affected rent in monthly installments of \$510.00 starting on October 1, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated December 8, 2020, for \$2,710.00 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 18, 2020;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the tenant at 8:30 pm on December 8, 2020; and
- A Direct Request Worksheet and ledger showing the rent owing and paid during the relevant portion of this tenancy. The ledger noted that, of the \$2,710.00 identified as owing in the 10 Day Notice, \$250.00 was paid on December 8, 2020 and \$1,000.00 was paid on December 20, 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 \$2,200.00, 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 December 8, 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 section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, December 18, 2020.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of the date of this application, December 25, 2020.

The ledger indicates the tenant made payments of \$250.00 on December 8, 2020 and \$1,000.00 on December 20, 2020. However, I find the landlords have not indicated whether these amounts were applied entirely towards the rent for December 2020 or if a portion was applied to the affected rent arrears.

I find I am not able to confirm which portion of the landlords' monetary claim is comprised of base rent and which portion is comprised of affected rent. 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. 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 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 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 landlords' 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: January 20, 2021

---

Residential Tenancy Branch