



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANCOUVER RESOURCE SOCIETY  
and [tenant name suppressed to protect privacy]

## **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 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 signed Proof of Service - Notice of Direct Request Proceeding document which declares that the Landlord served the Tenant and an unknown male occupant with the Notice of Direct Request Proceeding and supporting documents by registered mail on January 7, 2020. The Landlord provided copies of the Canada Post receipts containing the Tracking Number to confirm these mailings. As the unknown male occupant is not identified in the application, is not included on the tenancy agreement submitted into evidence, and will be subject to any order of possession granted, I amend the application to remove the “Unknown Male occupant” as a party, pursuant to section 64(3) of the *Act*. 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 January 12, 2021, 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 January 1, 2017, indicating a subsidized monthly rent of \$375.00 due on or before the first calendar day of each month for a tenancy commencing on January 1, 2017;
- A copy of a letter to the Tenant dated September 18, 2018 advising that the Tenant's rent increased to a "market" rate of \$1,200.00 due to the Tenant's "non-contribution to the over-night care model as described in paragraph 11 of the tenancy agreement between the parties;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 8, 2020 for \$3,495.00 in unpaid rent (the "10 Day Notice"). 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 19, 2020;
- A copy of a signed Proof of Service - Notice to End Tenancy form which indicates that the 10 Day Notice was served on the Tenant in person on December 8, 2020, which service was witnessed by K.S.;
- A copy of a Repayment Plan dated August 20, 2020 confirming 10 monthly payment of \$290.00 commencing October 1, 2020; and
- A copy of a Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy, supported by a tenant ledger.

### Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

In this case I find there is insufficient evidence before me to establish the amount of rent due. First, the tenancy agreement establishes monthly rent in the amount of \$375.00. However, it does not indicate the “market” rent for the unit in the event the Tenant breaches certain terms of the tenancy agreement, namely the Tenant’s obligation to “contribute 1.5 hours per day towards the overnight shift hours for the duration of the tenancy”. Rather, the tenancy agreement stipulates that the tenancy will be “terminated” if the Tenant fails to meet this obligation. Although the Landlord submitted a letter to the Tenant dated September 18, 2020 outlining the Tenant’s responsibilities, it does not describe how the “market” rent was determined.

Second, the calculation of the amount claimed by the Landlord as described on the tenant ledger is unclear in that installment payments appear to be added to the base “market” rent. The amount due also appears to include an NSF charge of \$25.00. Although paragraph 36 of the tenancy agreement permits a “service charge of \$20.00 each, or the then current rate”, the higher rate was not supported by documentary evidence separate from the tenant ledger.

Considering the above, I find the Landlord has failed to establish the amount of rent due. Therefore, the Landlord’s request for a monetary order for unpaid rent is dismissed with leave to reapply.

However, in accordance with sections 88 and 90 of the *Act*, I find that the Tenant received the 10 Day Notice on December 8, 2020, on which date it was served upon her in person.

Despite the uncertainty with respect to the amount of rent due, I 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 18, 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 partially successful, I find the Landlord is 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 25, 2021

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Residential Tenancy Branch