



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BRITESITE PROPERTIES LTD 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 for 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’s agent, D.E.K., served the Tenant with the Notice of Direct Request Proceeding and supporting documents in person on January 13, 2021, which service was witnessed by D.M.K. Based on the written submissions and evidence of the Landlord and in accordance with sections 89 and 90 of the *Act*, I find the Tenant was served with and received these documents on January 13, 2021.

### 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's agent and the Tenant on November 15, 2019, indicating a monthly rent of \$835.00 due on the first day of each month, for a tenancy commencing on December 1, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 11, 2021 for \$835.00 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 January 15, 2021;
- 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 by attaching a copy to the door or other conspicuous place on January 2, 2021, which service was witnessed by D.K.; and
- A copy of 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 \$835.00 as per the tenancy agreement.

The date on the 10 Day Notice and the Proof of Service - Notice to End Tenancy conflict. However, section 68 of the *Act* allows for the 10 Day Notice to be amended when it is reasonable to do so. Although the date of the 10 Day Notice had not occurred at the time that the 10 Day Notice was served on the Tenant, I find it is more likely than not that the 10 Day Notice was served on the Tenant on January 2, 2021. This finding is supported by the Proof of Service document which confirms service on January 2, 2021 was witnessed by D.K. Further, I find the 10 Day Notice was served on the Tenant for rent owing in the month that it was received. For these reasons, I find it is reasonable to amend the date of the 10 Day Notice to reflect the day it was witnessed being given to the Tenant, January 2, 2021. Pursuant to sections 88 and 90 of the *Act*, I find that the Tenant is deemed to have received the 10 Day Notice on January 5, 2021, three days after it was attached to the door or other conspicuous place.

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 January 15, 2021, the effective date of the 10 Day Notice.

Therefore, I find the Landlord is entitled to an order of possession and a monetary award in the amount of \$835.00 for unpaid rent due on January 1, 2021.

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 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 \$935.00 for unpaid rent and for the 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: February 1, 2021

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Residential Tenancy Branch