



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 Landlords for an order of possession and a monetary order based on unpaid rent, and an order granting recovery of the filing fee.

The Landlords submitted a signed Proof of Service - Notice of Direct Request Proceeding document which declares that the Landlords served the Tenant T.W. with the Notice of Direct Request Proceeding and supporting documents in person on January 18, 2021. The Tenant T.W. acknowledged receipt by signing the Notice of Direct Request Proceeding. Based on the written submissions and evidence of the Landlords, I find the Tenant T.W. was served with and received these documents on January 18, 2021.

However, the Landlords indicated that the Tenant D.V. was not served with the Notice of Direct Request Proceeding and supporting documents because he “already paid his portion of rent for an amount of \$800 by e transfer”. Therefore, I find that the Tenant D.V. was not served with the Notice of Direct Request Proceeding and supporting documents in accordance with the *Act* and Policy Guideline #39. As a result, I find it appropriate in the circumstances to amend the application to remove the Tenant D.V. as a party to the proceeding, pursuant to section 64(3) of the *Act*. Although I have continued to refer to the Tenants in the plural throughout this decision, the Tenant D.V. is not named in the style of cause or on any orders granted as a result of this proceeding. However, all occupants of the rental unit will remain subject to the order of possession.

### Issues to be Decided

1. Are the Landlords entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. Are the Landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?
3. 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 and the Tenants on September 9, 2020, indicating a monthly rent in the amount of \$1,600.00 due on the first day of each month, for a tenancy commencing on October 1, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 3, 2021 for \$1,600.00 in unpaid rent (the “10 Day Notice”). The 10 Day Notice provides that the Tenants 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 16, 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 Tenants by attaching a copy to the door or other conspicuous place on January 3, 2021, which service was witnessed by E.F.; 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 each of the Tenants were obligated to pay the full amount of rent due in the amount of \$1,600.00 per month under the terms of the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the Tenants are deemed to have received the 10 Day Notice on January 6, 2021, three days after it was attached to the door or other conspicuous place.

I accept the evidence before me that the Tenants failed to pay the rent owed in full within the five days after receipt of the 10 Day Notice 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 Tenants are conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on January 16, 2021, the effective date of the 10 Day Notice.

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

With respect to the Landlords' claim for unpaid rent, claims under the Direct Request process are limited to rent due in the month the 10 Day Notice is issued. I find the Landlords have demonstrated an entitlement to a monetary award in the amount of \$800.00 for unpaid rent due to January 31, 2021.

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

The Landlords are granted a monetary order in the amount of \$900.00 for unpaid rent to January 31, 2021 and for the recovery of the filing fee for this application. The monetary order must be served on the Tenant T.W. 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 5, 2021

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Residential Tenancy Branch