



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE ADVANTAGE REALTY LTD. and [tenant name suppressed to protect privacy]

## **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 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 documents which declare that the Landlord served each of the Tenants with the Notice of Direct Request Proceeding by registered mail on January 19, 2021. The Landlord submitted Canada Post Customer Receipts with a Tracking Number in support. Based on the written submissions and evidence of the Landlord and in accordance with sections 89 and 90 of the *Act*, I find the Tenants are deemed to have received these documents on January 24, 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 Tenants on May 25 and 26, 2017, indicating a monthly rent in the amount of \$1,400.00 due on the first day of each month, for a tenancy commencing on July 1, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 16, 2020 for \$7,175.00 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 December 29, 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 Tenants by attaching a copy to the door or other conspicuous place on December 16, 2020, which service was witnessed by B.C.;
- Copies of Direct Request Worksheets showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of a type-written letter dated August 21, 2020 setting out the terms of a rent repayment plan in effect from October 1, 2020 to July 1, 2021;
- Copy of an Assignment Agreement effective December 1, 2019;
- A copy of a Notice of Rent Increase dated September 28, 2018 increasing rent from \$1,400.00 to \$1,435.00 effective January 1, 2018; and
- A copy of a Statement of rents due and received for the period from June 8, 2017 to January 6, 2021.

### Analysis

I have reviewed all documentary evidence and I find that the Tenants were obligated to pay the monthly rent in the amount of \$1,435.00.

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 December 19, 2020, three days after it was attached to the Tenants' 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 December 29, 2020, the 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 Tenants.

With respect to the Landlord's claim for unpaid rent, 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 that the evidentiary material submitted gives rise to issues that cannot be addressed in a Direct Request Proceeding. First, the amount of rent claimed on the 10 Day Notice dated December 16, 2020 (\$7,175.00) does not match the amount the Statement indicates was due on December 3, 2020 (\$7,355.00) or the amount the Direct Request Worksheet indicates was due as of December 1, 2020 (\$7,335.00).

Second, I note that the Statement does not incorporate the amounts due under the terms of the repayment plan until January 1, 2021, even though the repayment plan commenced October 1, 2020.

Considering the above, I find I am unable to determine the amount of rent due with certainty. The Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply.

As the Landlord is partially 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 Tenants. The order of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

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

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 Tenants. 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 8, 2021

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Residential Tenancy Branch