



# Dispute Resolution Services

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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 February 26, 2021, the landlords sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on March 3, 2021, the fifth day after their registered mailing.

### 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

The landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenant on May 11, 2020, indicating a monthly rent of \$2,300.00, due on the first day of each month for a tenancy commencing on May 15, 2020

- A copy of a Repayment Plan dated October 9, 2020 indicating the tenant would be responsible for repayment of affected rent in monthly installments of \$100.00 starting on December 1, 2020
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 8, 2021, for \$5,900.00 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 February 21, 2021
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was placed in the tenant's mailbox or mail slot at 6:38 pm on February 8, 2021
- 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 \$2,300.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on February 11, 2021, three days after it was placed in the mailbox or mail slot.

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, February 21, 2021.

The landlords have requested monetary compensation for two repayment installments in the amount of \$100.00 each, which is a partial amount of the affected rent of \$800.00 owing for August 2020.

I find that awarding only a portion of a month's rent may potentially affect the landlords' ability to recover the balance owing for August 2020 in a future dispute resolution proceeding.

For this reason, I exercise my discretion to not adjudicate the monetary claim relating to unpaid affected rent for August 2020. The landlords have leave to reapply for a

Monetary Order so that the entirety of the August 2020 rent can be considered in a participatory hearing.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary award in the amount of \$5,700.00, the amount claimed by the landlords for unpaid rent owing for December 2020, January 2021, and February 2021, as of the date of this application, February 17, 2021.

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 sections 67 and 72 of the *Act*, I grant the landlords a Monetary Order in the amount of \$5,800.00 for rent owed for December 2020, January 2021, and February 2021 and 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 affected rent owing for August 2020 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: March 12, 2021

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Residential Tenancy Branch