



# 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 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 a signed Proof of Service Notice of Direct Request Proceeding document which declares that the Landlord served the Tenant with a Notice of Dispute Resolution Hearing and supporting documents by registered mail on March 19, 2021. Service of these documents in this manner was supported by a Canada Post receipt which included the tracking number. Pursuant to sections 89 and 90 of the *Act*, I find these documents are deemed to have been received by the Tenant on March 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 on April 28, 2020 and by the Tenant on April 30, 2020, indicating a monthly rent in the amount of \$1,900.00 due on the “30<sup>th</sup> or 31<sup>st</sup>” of each month, for a tenancy commencing on June 1, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 1, 2021 for \$2,126.00 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 date of March 14, 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 of the rental unit on March 2, 2021, which service was witnessed by L.H.; and
- A copy of a Direct Request Worksheet showing the rent due and paid during the relevant period.

### Analysis

I have reviewed all documentary evidence and I find that the Tenant was obligated to pay monthly rent in the amount of \$1,900.00. I accept that rent was due on the last day of each month.

In accordance with sections 88 and 90 of the *Act*, I find that the Tenant is deemed to have received the 10 Day Notice on March 5, 2021, three days after it was attached to the Tenant’s door.

I accept the evidence before me that the Tenant 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 Tenant is conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on March 15, 2021, 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.

With respect to the Landlord's request for a monetary order 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.

I find that the application raises issues that cannot be addressed during a Direct Request Proceeding. Specifically, the 10 Day Notice and the Direct Request Worksheet reveal discrepancies with respect to dates rent was due and the amounts outstanding.

For example, the 10 Day Notice indicates that rent was not paid when due on February 28, 2021 (\$1,900.00) and that an amount remained unpaid from January rent (\$226.00). The total of these amounts equals \$2,126.00.

On the other hand, the Direct Request Worksheet indicates that rent was not paid when due on December 31, 2020 and on January 31, 2021. However, the amount of \$2,156.00 appears to be based on a mathematical error. If the amount of the partial payment indicated on the Direct Request Worksheet is relied upon, the amount of rent due would be \$2,146.00.

As I am unable to confirm when rent was due and in what amounts, I find that the Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply.

As the Landlord has had some success, I find they are 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 \$100.00 in recovery of the filing fee. 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: April 7, 2021

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Residential Tenancy Branch