



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, OPRM-DR

### Preliminary Matters

I note that the tenant's rental address on the Application for Dispute Resolution submitted by the landlords is slightly different than the rental address shown on the tenancy agreement, the 10 Day Notice, and all other documents submitted with the Application. Section 64(3)(c) of the *Act* allows me to amend the application to match the tenancy agreement and the 10 Day Notice, which I have done.

### 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 March 23, 2021, the landlords personally served the tenant the Notice of Direct Request Proceeding. The landlords had a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm personal service. Based on the written submissions of the landlords and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on March 23, 2021.

### 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*?

### 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 tenant on February 23, 2018, indicating a monthly rent of \$995.00, due on the first day of each month for a tenancy commencing on March 15, 2018
- A copy of a Notice of Rent Increase form showing the rent being increased from \$995.00 to the monthly rent amount of \$1,020.00
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 2, 2021, for \$1,560.00 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 March 15, 2021
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 4:00 pm on March 2, 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 in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on March 5, 2021, three days after its posting.

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, March 15, 2021.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of the date of this application, March 16, 2021.

Part 3, section 41 of the *Act* establishes that a landlord may impose a rent increase only up to an amount calculated in accordance with the regulations, ordered by an Arbitrator, or agreed to by the tenant.

I find that the landlords have raised the rent from \$995.00 to \$1,020.00 in 2019. In 2019, the maximum allowable increase in accordance with the regulations was 2.5%. I find that 2.5% of \$995.00 is \$24.88; however, the landlords increased the rent by \$25.00. Therefore, I find that the landlords have not increased the rent in accordance with the regulations.

I also find that the landlords have not submitted any evidence to establish whether the landlords received an order from an Arbitrator or the tenant's written consent to increase the rent above the maximum calculated in accordance with the regulations.

I find that I am not able to determine the precise amount of the monthly rent owing and for this reason the landlords' application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

### 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.

I dismiss the landlords' application for a Monetary Order for unpaid rent 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: April 12, 2021

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Residential Tenancy Branch