



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, OPRM-DR

### 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 landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on March 25, 2021, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing. Based on the written submissions of the landlord 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 30, 2021, the fifth day after their registered mailing.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord 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 landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on December 3, 2019, indicating a monthly rent of \$1,495.00, due on the first day of each month for a tenancy commencing on January 1, 2020

- A copy of an incomplete Repayment Plan
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 11, 2021, for \$5,185.00 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 24, 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 on March 11, 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 \$1,495.00, 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 March 14, 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 24, 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 23, 2021.

Policy Guideline #52 provides the following information pertaining to the *COVID-19 Related Measures Act (the C-19 Act)*:

*"Affected rent means rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the "specified period" between March 18, 2020 and August 17, 2020"*

The guideline goes on to state:

*"A landlord cannot pursue an eviction for unpaid affected rent unless they have already given a valid repayment plan or there is a valid prior agreement still in effect."*

I find that the rent listed on the 10 Day Notice includes amounts owing from May 2020 to August 2020 which is considered affected rent. I find that the Repayment Plan submitted by the landlord is incomplete as it does not contain the details of the amount outstanding and the monthly repayment installments required.

For this reason, I find I am not able to confirm whether the landlord had the authority to include affected rent on the 10 Day Notice.

In a Direct Request Proceeding, the landlord is limited to monetary claims related to a valid amount of rent that appears on the 10 Day Notice.

As I am not able to confirm the precise amount of valid rent listed on the 10 Day Notice, the landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

### Conclusion

I grant an Order of Possession to the landlord 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 landlord's 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 15, 2021

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Residential Tenancy Branch