



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

The landlord submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on May 16, 2021, the landlord personally served each of the tenants the Notice of Dispute Resolution Proceeding - Direct Request. The landlord had a witness sign the Proof of Service Notice of Direct Request Proceeding forms to confirm personal service. Based on the written submissions of the landlord and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on May 16, 2021.

### 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*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

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 April 1, 2021, indicating a monthly rent of \$1,100.00, due on the first day of each month for a tenancy commencing on April 1, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 13, 2021, for \$1,862.50 in unpaid rent. 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 April 23, 2021

- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the tenants at 7:30 pm on April 13, 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 tenants were obligated to pay the monthly rent in the amount of \$1,100.00, as per the tenancy agreement.

In accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on April 13, 2021.

I accept the evidence before me that the tenants have 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 tenants are 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, April 23, 2021.

In a Direct Request Proceeding, a landlord cannot pursue rent owed for a period beyond the date on which the Notice was issued to the tenants. The 10 Day Notice was issued to the tenants on April 13, 2021. For this reason, within the purview of the Direct Request process, I cannot hear the monetary portion of the landlord's application for rent owed for May 2021.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$762.50, the amount claimed by the landlord for unpaid rent owing for April 2021, as of the date of this application, May 3, 2021.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) 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 landlord a Monetary Order in the amount of \$862.50 for rent owed for April 2021 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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 landlord's application for a Monetary Order for unpaid rent owing for May 2021 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: May 26, 2021

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Residential Tenancy Branch