



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MaxSave Real Estate Services  
Ltd and [tenant name suppressed to protect privacy]

## **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 two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on May 26, 2021, the landlord sent each of the tenants the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipts containing the tracking numbers to confirm these mailings.

Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on May 26, 2021 and are deemed to have been received by the tenant on May 31, 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 tenants on January 25, 2013, indicating a monthly rent of \$1,400.00, due on the first day of each month for a tenancy commencing on January 25, 2013
- A copy of three Notice of Rent Increase forms showing the rent being increased from \$1,400.00 to the monthly rent amount of \$1,535.00
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 4, 2021, for \$3,146.00 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 May 14, 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 12:40 pm on May 4, 2021
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy
- A copy of a receipt dated May 10, 2021, for \$1,573.00 of rent, paid by the tenants, which the landlord has indicated is "for use and occupancy only"

### Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was duly served to the tenants on May 4, 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, May 14, 2021.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of the date of this application, May 14, 2021.

When there have been rent increases, all appropriate Notice of Rent Increase forms must be submitted with the Application for Dispute Resolution to substantiate the claim for the increased rent.

The landlord has submitted Notice of Rent Increase forms showing the rent being adjusted from \$1,400.00 to \$1,535.00. However, I find the landlord has not submitted a

copy of a Notice of Rent Increase showing the rent was legally increased from \$1,535.00 to the \$1,573.00 listed on the Direct Request Worksheet.

I find I am not able to confirm the amount of the monthly rent and for this reason 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(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.

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: June 02, 2021

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Residential Tenancy Branch