



# 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 a Proof of Service Notice of Direct Request Proceeding which was signed on June 16, 2021 and declares that the landlord served Tenant K.B. the Notice of Dispute Resolution Proceeding - Direct Request by posting the documents to the door of the rental unit. The landlord had a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm this service.

Based on the written submissions of the landlord and in accordance with sections 89(2) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on June 16, 2021 and are deemed to have been received by Tenant K.B. on June 19, 2021, the third day after their posting.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that the landlord served Tenant D.N. the Notice of Dispute Resolution Proceeding – Direct Request by e-mail.

Section 89 of the *Act* provides that a Notice of Dispute Resolution Proceeding - Direct Request may be served “*by any other means of service provided for in the regulations.*”

Section 43(2) of the *Residential Tenancy Regulation* provides that documents “*may be given to a person by emailing a copy to an email address **provided as an address for service by the person.***”

The landlord has indicated they served the Notice of Dispute Resolution Proceeding - Direct Request to Tenant D.N. by e-mail. However, I find there is no evidence to demonstrate that Tenant D.N.'s e-mail address was provided for service of documents, as required by section 43(2) of the *Residential Tenancy Regulation*.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to Tenant D.N. and for this reason, I will only proceed with the portion of the landlord's application naming Tenant K.B. as a respondent.

#### 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 Tenant K.B. on February 28, 2021, indicating a monthly rent of \$3,300.00, due on the first day of each month for a tenancy commencing on March 1, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 6, 2021, for \$3,300.00 in unpaid rent and \$108.92 in unpaid utilities. The 10 Day Notice provides that Tenant K.B. 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 24, 2021
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was served to Tenant K.B. by handing the document to Tenant D.N. on May 20, 2021
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy. The Direct Request Worksheet noted that \$500.00 of the \$3,300.00 identified as owing in the 10 Day Notice was paid on May 18, 2021

#### Analysis

I have reviewed all documentary evidence and I find that Tenant K.B. was obligated to pay the monthly rent in the amount of \$3,300.00, as per the tenancy agreement.

In accordance with section 88 of the *Act*, I find that the 10 Day Notice was duly served to Tenant K.B. on May 20, 2021.

I accept the evidence before me that Tenant K.B. 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 Tenant K.B. is conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, May 30, 2021.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of the date of this application, June 1, 2021.

In this type of matter, the landlord must prove they served the tenant with the Notice of Dispute Resolution Proceeding – Direct Request and all documents in support of the application in accordance with section 89 of the *Act*.

Section 89(1) of the *Act* does not allow for the Notice of Dispute Resolution Proceeding - Direct Request to be given to the tenant by attaching a copy to a door at the address at which the tenant resides.

Section 89(2) of the *Act* does allow for the Notice of Dispute Resolution Proceeding - Direct Request to be given to the tenant by attaching a copy to a door at the address at which the tenant resides, only when considering an Order of Possession for the landlord.

I find that the landlord has served the Notice of Dispute Resolution Proceeding - Direct Request to the door of the rental unit at which Tenant K.B. resides, and for this reason, the monetary portion of the landlord's application for unpaid rent is dismissed, with leave to reapply.

For the same reason noted above, the landlord's application to recover the filing fee paid for this application is dismissed, without leave to reapply.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on Tenant K.B. Should Tenant K.B. and any other occupant 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.

I dismiss the landlord's application to recover the filing fee paid for this application without 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 21, 2021

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Residential Tenancy Branch