



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **OPR-DR, MNR-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 to obtain an order of possession based on unpaid rent, to obtain monetary compensation for unpaid rent, and to recover the filing fee paid for the application.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the Landlord on July 28, 2021.

The Landlord submitted a copy of two witnessed Proof of Service Notice of Direct Request Proceeding forms which declare that on August 13, 2021, the Landlord sent the Tenants the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit and posted them to the door of the rental unit. The Landlord did not provide the required copies of the Canada Post Customer Receipts containing the tracking numbers or printed copies of tracking reports to confirm the registered mail service.

As the Landlord did not provide the required proof to confirm the registered mail service, I find that I cannot confirm this service. However, I accept that the Landlord served the Tenants the Notice of Dispute Resolution Proceeding - Direct Request by posting it to the door of the rental unit as they provided the required witness information to confirm this service.

Based on the written submissions and evidence 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 August 13, 2021 and are deemed to have been received by the Tenants on August 16, 2021, the third day after they were posted to the door of the rental unit.

### Issues 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 February 10, 2021, indicating a monthly rent of \$1,200.00, due on the first day of each month for a tenancy commencing on February 10, 2021;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated June 16, 2021, for \$1,200.00 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 June 29, 2021;
- a copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was left in the mailbox or mail slot at the Tenants’ residence at 2:00pm on June 16, 2021; and;
- a copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

### Analysis

I have reviewed all documentary evidence and I find that the Tenants were obligated to pay the monthly rent in the amount of \$1,200.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on June 16, 2021 and is deemed to have been received by the Tenants on June 19, 2021, three days after it was placed in the mailbox or mail slot.

I note that the address indicated on the 10 Day Notice from which the Tenants must move is slightly different than the Tenants' address on the 10 Day Notice where documents are served, the tenancy agreement, the Application for Dispute Resolution and other documents submitted with the Landlord's application. I have amended this address to match all other information provided for the address as per section 68(1) of the *Act* as it is reasonable to do so under the circumstances.

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, June 29, 2021.

Therefore, I find that the Landlord is entitled to an order of possession.

In this type of matter, the Landlord must prove they served the Tenants 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 Tenants by attaching a copy to a door at the address at which the Tenants reside.

Section 89(2) of the *Act* does allow for the Notice of Dispute Resolution Proceeding - Direct Request to be given to the Tenants by attaching a copy to a door at the address at which the Tenants reside, 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 the Tenants reside, 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 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.

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: September 02, 2021

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Residential Tenancy Branch