



# 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 August 16, 2021.

The Landlord submitted a signed Proof of Service Notice of Direct Request Proceeding form which declares that on September 3, 2021, the Landlord emailed the Tenant the Notice of Dispute Resolution Proceeding - Direct Request to the email address provided by the Tenant for service of documents.

Based on the written submissions and evidence of the Landlord and in accordance with sections 43(2) and 44 of the *Residential Tenancy Regulation*, I find that the Direct Request Proceeding documents were served on September 3, 2021 and are deemed to have been received by the Tenant on September 6, 2021, the third day after they were emailed.

### **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

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 March 17, 2021, indicating a monthly rent of \$1,695.00, 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 or Utilities (the “10 Day Notice”) dated August 4, 2021, for \$1,720.00 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 August 14, 2021;
- a copy of a signed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was emailed to the Tenant on August 4, 2021. The Landlord submitted a copy of the email dated August 4, 2021 with the attached 10 Day Notice to confirm they served the Tenant; and;
- a copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

### Analysis

In this type of matter, the Landlord must prove they served the Tenant with the 10 Day Notice in accordance with section 88 of the *Act*.

Section 88 of the *Act* provides that a 10 Day Notice may be served “*by any other means of service provided for in the regulations.*”

Section 43(1) 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.***”

I find that the Landlord has sent the 10 Day Notice to the Tenant by email to the email address provided by the Tenant on the Tenancy Agreement for service of documents as required by section 43(1) of the *Residential Tenancy Regulation*.

In accordance with sections 43(1) and 44 of the *Regulation*, I find that the 10 Day Notice was served on August 4, 2021 and is deemed to have been received by the Tenant on August 7, 2021, three days after it was emailed.

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 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, August 17, 2021.

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

I note that the only monetary award available to a Landlord by way of the direct request process is for unpaid rent and unpaid utilities. As the Landlord has also sought a monetary award for matters relating to a parking fee in the amount of \$25.00 per month as specified in the tenancy agreement, I would not be able to consider this aspect of the Landlord's claim through the direct request process.

I find the Landlord entitled to a monetary award in the amount of \$1,695.00 for unpaid rent owing for August 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. 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.

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a monetary order in the amount of \$1,795.00 for rent owed for August 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 must be served with **this order** as soon as possible. Should the Tenant 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 parking fees 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: September 16, 2021

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Residential Tenancy Branch