



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-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 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 29, 2021.

The landlord submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on August 13, 2021, the landlord posted the Notices of Dispute Resolution Proceeding - Direct Request to the door of the rental unit. The landlord had a witness sign the Proof of Service Notice of Direct Request Proceeding forms 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 August 13, 2021 and are deemed to have been received by the tenants on August 16, 2021, the third day after their posting.

### 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 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.H. on November 22, 2019, indicating a monthly rent of \$1,475.00, due on the first day of each month for a tenancy commencing on December 1, 2019

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 6, 2021, for \$737.50 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 July 27, 2021
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenants by registered mail at 3:13 pm on July 7, 2021
- A copy of an envelope and a Canada Post tracking report containing the tracking number to confirm the 10 Day Notice was sent to the tenants on July 7, 2021
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

### Analysis

Paragraph 12 (1) (b) of the Residential Tenancy Regulation establishes that a tenancy agreement is required to be “signed and dated by both the landlord and the tenant.”

I find that Respondent J.H. has not signed the tenancy agreement, which is a requirement of the direct request process. For this reason, I will only proceed with the portion of the landlord’s application naming Tenant K.H. as a respondent.

I find that Tenant K.H. was obligated to pay the monthly rent in the amount of \$1,475.00, 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 July 7, 2021 and is deemed to have been received by Tenant K.H. on July 12, 2021, five days after its registered mailing.

I accept the evidence before me that Tenant K.H. 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.H. is 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, July 27, 2021.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent.

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.H. resides, and for this reason, 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.H. Should Tenant K.H. 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 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