



# Dispute Resolution Services

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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 August 11, 2021.

The Landlord submitted a copy of a signed Proof of Service Notice of Direct Request Proceeding form which declares that on August 30, 2021, the Landlord sent the Tenant 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 Receipt containing the tracking number to confirm they served the Tenant.

Based on the written submissions and evidence of the Landlord and in accordance with sections 89(1) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on August 30, 2021 and are deemed to have been received by the Tenant on September 4, 2021, the fifth day after they were mailed.

### **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 recover the filing fee for this application pursuant to section 72 of the *Act*?

### Preliminary Matter

I note that the rental address on the Application for Dispute Resolution submitted by the Landlord is slightly different than the rental address shown on the tenancy agreement submitted with the Application. Section 64(3)(c) of the *Act* allows me to amend the application to match the tenancy agreement, which I have done.

### 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 Tenant on April 28, 2021, indicating a monthly rent of \$1,400.00, due on the first day of each month for a tenancy commencing on May 1, 2021;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated August 2, 2021, for \$1,400.00 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 13, 2021;
- a copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the Tenant’s door at 4:13pm on August 2, 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 Tenant was obligated to pay the monthly rent in the amount of \$1,400.00, 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 August 2, 2021 and is deemed to have been received by the Tenant on August 5, 2021, three days after it was posted to the door.

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 15, 2021.

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

As the Landlord was 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 section 72 of the *Act*, I grant the Landlord a monetary order in the amount of \$100.00 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.

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 13, 2021

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Residential Tenancy Branch