



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR

### 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 landlords to obtain an Order of Possession based on unpaid rent and, to obtain monetary compensation for unpaid rent.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the landlords on August 12, 2021.

The landlords submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on August 29, 2021, the landlords personally served each of the tenants the Notice of Dispute Resolution Proceeding - Direct Request. The landlords had the tenants and a witness sign the Proof of Service Notice of Direct Request Proceeding forms to confirm personal service.

Based on the written submissions of the landlords and in accordance with section 89 of the *Act*, I find that the Direct Request Proceeding documents were duly served to the tenants on August 29, 2021.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

### Background and Evidence

The landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by one of the landlords and Tenant A.S. on June 25, 2012, indicating a monthly rent of \$850.00, due on the first day of each month for a tenancy commencing on June 25, 2012

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 16, 2021, for \$475.00 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 August 16, 2021
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the tenants at 1:53 pm on August 6, 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 Tenant L.B. 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 landlords’ application naming Tenant A.S. as a respondent.

In accordance with section 88 of the *Act*, I find that the 10 Day Notice was duly served to Tenant A.S. on August 6, 2021.

Section 68 of the *Act* allows for the 10 Day Notice to be amended when it is reasonable to do so. I find that the date of the 10 Day Notice is for a date that had not occurred at the time that the 10 Day Notice was issued to Tenant A.S. For this reason, I have amended the date of the 10 Day Notice to reflect the day it was witnessed being given to Tenant A.S., August 6, 2021.

I accept the evidence before me that Tenant A.S. 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 A.S. 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, August 16, 2021.

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

I note that the amount of rent on the tenancy agreement (\$850.00) does not match the amount of the monthly rent listed on the Direct Request Worksheet (\$925.00). The Direct Request Worksheet must clearly show any additional months for which the tenant

still owes rent; or, if there has been a rent increase, the appropriate Notice of Rent Increase forms must be submitted with the Application for Dispute Resolution to substantiate the claim for the increased rent.

I find I am not able to confirm the precise amount of rent owing and for this reason, the landlords' application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

### Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on Tenant A.S. Should Tenant A.S. 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 landlords' application for a Monetary Order for unpaid rent 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 14, 2021

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Residential Tenancy Branch