



# 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 landlords 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 landlords on September 5, 2021.

The landlords submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on September 18, 2021, the landlords sent each tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipts containing the tracking numbers to confirm these mailings.

Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on September 18, 2021 and are deemed to have been received by the tenants on September 23, 2021, the fifth day after their registered mailing.

### 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*?

Are the landlords 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 landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and Tenant D.P. on June 15, 2019, indicating a monthly rent of \$1,900.00, due on the first day of each month for a tenancy commencing on July 1, 2019
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 10, 2021, for \$1,900.00 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 July 20, 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 tenants' door at 10:15 am on July 10, 2021
- A Direct Request Worksheet and ledgers showing the rent owing and paid during the relevant portion of this tenancy. One of the ledgers indicates that the tenants paid \$800.00 on August 23, 2021 and \$300.00 on September 3, 2021

### 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 K.P. 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 D.P. as a respondent.

I find that Tenant D.P. was obligated to pay the monthly rent in the amount of \$1,900.00, 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 10, 2021 and is deemed to have been received by Tenant D.P. on July 13, 2021, three days after its posting.

I accept the evidence before me that Tenant D.P. has failed to pay the rent owed in full by July 18, 2021, 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 D.P. 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, July 23, 2021.

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

In a Direct Request Proceeding, a landlord cannot pursue rent owed for an amount beyond the amount noted on the 10 Day Notice that was issued to the tenant.

The landlords have requested a Monetary Order in the amount of \$8,730.00. However, I find the 10 Day Notice only lists an amount owing of \$1,900.00, which is equal to one month's rent.

I also note that the ledger indicates that \$1,000.00 was paid on July 7, 2021. I find I am not able to determine whether the 10 Day Notice includes arrears from previous months, or whether the payment of \$1,000.00 on July 7, 2021 was applied to arrears.

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

As the landlords were partially successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on Tenant D.P. Should Tenant D.P. 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.

Pursuant to section 72 of the *Act*, I grant the landlords a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlords are provided with this Order in the above terms and Tenant D.P. must be served with **this Order** as soon as possible. Should Tenant D.P. 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 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: October 08, 2021

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Residential Tenancy Branch