



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPILANO HEIGHTS RESTAURANT CO.  
LTD. and [tenant name suppressed to protect privacy]

## **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 filed by the Landlord for an order of possession and a monetary order for unpaid rent and to recover the filing fee.

The Landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that they served the Tenant with a Notice of Dispute Resolution Proceeding and supporting evidence by email on December 25, 2021. Service in this manner was supported by a copy of the outgoing email showing the email address used, the date the email was sent, the attachments included in the email, and the document in which the Tenant provided an email address for service. Pursuant to sections 89 and 90 of the Act, I find these documents are deemed to have been received by the Tenant on December 28, 2021, three days after they were sent by email.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the Act?
2. Is the Landlord entitled to a monetary order for unpaid rent pursuant to sections 46 and 67 of the Act?
3. Is the Landlord entitled to recover the filing fee 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 signed residential tenancy agreement signed by the parties on July 9, 2021, indicating a monthly rent in the amount of \$700.00 due on the first day of each month, for a tenancy commencing on July 9, 2021;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 3, 2021, for \$1,400.00 in unpaid rent (the 10 Day Notice). 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 December 14, 2021;
- A copy of a signed Proof of Service Notice to End Tenancy document which indicates that the 10 Day Notice was served on the Tenant by email on December 3, 2021, which service was supported by a copy of the outgoing email showing the email address used, the date the email was sent, the attachments included in the email, the Tenant's response, and the document in which the Tenant provided an email address for service; and
- A copy of a Direct Request Worksheet showing the rent due and paid during the relevant period.

### Analysis

I have reviewed all documentary evidence and I find that the Tenant was obligated to pay monthly rent in the amount of \$700.00.

In accordance with sections 88 and 90 of the Act, I find that the Tenant is deemed to have received the 10 Day Notice on December 6, 2021, three days after it was sent by email.

I find the 10 Day Notice complies with the form and content requirements of section 52 of the Act.

I accept the evidence before me that the Tenant failed to pay the rent owed in full and did not dispute the 10 Day Notice within five days after receipt in accordance with section 46(4) of the Act.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on December 16, 2021, the corrected effective date of the 10 Day Notice.

Therefore, I find the Landlord is entitled to an order of possession which will be effective two days after it is served on the Tenant.

I also find the Landlord has demonstrated an entitlement to a monetary award in the amount of \$1,400.00 for unpaid rent to December 31, 2021. Claims under the Direct Request process are limited to what is indicated in the 10 Day Notice. The Landlord remains at liberty to reapply for a monetary order for any additional unpaid rent or other losses.

Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the application.

### Conclusion

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession must be served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$1,500.00 for unpaid rent and in recovery of the filing fee. The monetary order must be served on the Tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: January 26, 2022

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Residential Tenancy Branch