



# 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 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 documents by registered mail on November 25, 2021. Service in this manner was supported by a Canada Post registered mail receipt which confirmed the date and time of service and included the tracking number. Pursuant to sections 89 and 90 of the Act, I find these documents are deemed to have been received by the Tenant on November 30, 2021, five days after they were mailed.

### 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 residential tenancy agreement which was signed by the parties on February 6, 2016, indicating a monthly rent in the amount of \$1,200.00 due on the first day of each month, for a tenancy commencing on February 15, 2016;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2021 for \$1,700.00 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 November 15, 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 leaving a copy in the mailbox or mail slot at the address where the Tenant resides on November 2, 2021, which service was witnessed by H.C.; and
- A copy of a Direct Request Worksheet showing the monthly rent due (\$1,350.00) and paid during the relevant period.

### Analysis

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 November 5, 2021, three days after a copy was left in the mailbox or mail slot at the address where the Tenant resides.

I accept the evidence before me that the Tenant failed to pay the rent owed in full within five days after receipt of the 10 Day Notice as per 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 section 46(5) of the Act to have accepted that the tenancy ended on November 15, 2021, the 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.

With respect to the Landlord's claim for unpaid rent, the onus is on the Landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the Landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

Policy Guideline #39 confirms that a landlord making an application for dispute resolution through the Direct Request process must provide copies of certain documents, including documents showing changes to the tenancy agreement or tenancy, such as rent increases, or changes to parties or their agents.

In this case, I have examined the documents submitted and there is no documentation to support the increase in rent from \$1,200.00 per month as indicated in the tenancy agreement to \$1,350.00 per month as claimed in the application. Rent increases must be supported by the appropriate Notice of Rent Increase forms to substantiate the claim.

While I accept that rent was not paid in full, I find that the precise amount of rent due has not been substantiated. As a result, I am not able to determine the amount of rent owing. For this reason, the Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply.

As the Landlord is partially successful, I find they are entitled to a monetary award in the amount of \$100.00 in recovery of the 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 may be filed and enforced as an order of the Supreme Court of British Columbia.

The Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply.

The Landlord is granted a monetary order in the amount of \$100.00 in recovery of the filing fee for this application. 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 5, 2022

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Residential Tenancy Branch