



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR-DR, MNR-DR, FFL

### Preliminary Matters

I note that the tenants' unit number on the Application for Dispute Resolution submitted by the landlords (Upper) is slightly different than the rental address shown on the tenancy agreement, the 10 Day Notice, and all other documents submitted with the Application (unit A). Section 64(3)(c) of the *Act* allows me to amend the application to match the tenancy agreement and the 10 Day Notice, which I have done.

### 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 December 28, 2021.

The landlords submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on January 12, 2022, the landlords served the tenants the Notices of Dispute Resolution Proceeding - Direct Request by handing both sets of documents to Tenant R.K. The landlords had a witness and Tenant R.K. 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(1) of the *Act*, I find that the Direct Request Proceeding documents were duly served to Tenant R.K. on January 12, 2022. In accordance with section 89(2) of the *Act*, I find that the Direct Request Proceeding documents were duly served to Tenant R.T. on January 12, 2022.

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

The landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenants, indicating a monthly rent of \$1,960.00, due on the first day of each month for a tenancy commencing on March 1, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated December 16, 2021, for \$1,960.00 in unpaid rent and \$76.14 in unpaid utilities. 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 December 27, 2021
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was served to the tenants in person at 7:28 pm on December 16, 2021
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

Analysis

I have reviewed all documentary evidence and I find that the tenants were obligated to pay the monthly rent in the amount of \$1,960.00, as per the tenancy agreement.

In accordance with section 88 of the *Act*, I find that the 10 Day Notice was duly served to the tenants on December 16, 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 address from which the tenants must vacate does not match the tenants' address for service of documents on the 10 Day Notice or the tenants' address on the tenancy agreement.

I further find that the tenants are not prejudiced by amending the address as they are aware of what their correct address is on the signed tenancy agreement. For this reason, I have amended the address on the 10 Day Notice from which the tenants must vacate to reflect the address on the tenancy agreement.

I accept the evidence before me that the tenants have 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 tenants are 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, December 27, 2021.

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

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. I find that there is no written demand in the landlords' evidence submissions which would allow the landlords to treat the utilities as unpaid rent. For this reason, the monetary portion of the landlords' application concerning unpaid utilities is dismissed, with leave to reapply.

In this type of matter, the landlords must prove they served the tenants with the Notice of Dispute Resolution Proceeding– Direct Request and all documents in support of the application in accordance with section 89 of the *Act*.

Section 89(1) of the *Act* does not allow for the Notice of Dispute Resolution Proceeding - Direct Request to be given to the tenant by leaving a copy with an adult who resides with the tenant.

Section 89(2) of the *Act* does allow for the Notice of Dispute Resolution Proceeding - Direct Request to be given to the tenant by leaving a copy with an adult who resides with the tenant, only when considering an Order of Possession for the landlord.

I find that the landlords have served the Notice of Dispute Resolution Proceeding - Direct Request to Tenant R.T. by leaving a copy with Tenant R.K., an adult who resides with Tenant R.T., and for this reason, the monetary portion of the landlords' application concerning unpaid rent, naming Tenant R.T. as a respondent, is dismissed, without leave to reapply.

Therefore, I find the landlords are entitled to a monetary award against Tenant R.K. in the amount of \$1,960.00, the amount claimed by the landlords for unpaid rent owing for December 2021.

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 the tenant(s). Should the tenant(s) 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 sections 67 and 72 of the *Act*, I grant the landlords a Monetary Order in the amount of \$2,060.00 for rent owed for December 2021 and for the recovery of the filing fee for this application. The landlords are provided with this Order in the above terms and Tenant R.K. must be served with **this Order** as soon as possible. Should Tenant R.K. 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 portion of the landlords' application for a Monetary Order for unpaid rent naming Tenant R.T. as a respondent without leave to reapply.

I dismiss the landlords' application for a Monetary Order for unpaid utilities 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: January 28, 2022

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Residential Tenancy Branch