



# 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 landlord 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 landlord on June 15, 2022.

### Preliminary Matters

I note that, on July 7, 2022, the landlord submitted an Application for Substituted Service requesting to serve Tenant M.T. the Notice of Dispute Resolution Proceeding – Direct Request by e-mail and by Facebook Messenger.

The landlord submitted a copy of the tenancy agreement providing an e-mail address for Tenant M.T., which was signed by Tenant M.T. on December 17, 2021, over seven months ago. The landlord has not submitted a copy of any recent e-mails received from Tenant M.T. or any other proof, such as e-mail “read receipts”, to demonstrate that Tenant M.T.’s e-mail address is currently active and being regularly monitored, such as within the past two months.

For this reason, I find I cannot conclude that Tenant M.T. would receive the Notice of Dispute Resolution Proceeding – Direct Request if it were sent to Tenant M.T. by e-mail.

The landlord submitted a screenshot of a Facebook Marketplace conversation; however, I find this document does not indicate the date on which the conversation took place. The landlord also submitted a screenshot of Tenant M.T.’s Facebook profile showing that the landlord and Tenant M.T. are not “friends” on the app.

Finally, I find the landlord has not submitted a copy of any recent Facebook Messenger conversations with Tenant M.T. showing that Tenant M.T. can receive messages from the landlord and that Tenant M.T. regularly monitors their Messenger account.

For this reason, I find I cannot conclude that Tenant M.T. would receive the Notice of Dispute Resolution Proceeding – Direct Request if it were sent to Tenant M.T. by Facebook Messenger.

Therefore, the landlord's request for substituted service to Tenant M.T. by e-mail and Facebook Messenger is dismissed with leave to reapply.

#### Notice of Dispute Resolution Proceeding – Direct Request

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on July 6, 2022, the landlord served Tenant D.C. the Notice of Dispute Resolution Proceeding - Direct Request in person. The landlord had a witness and Tenant D.C. sign the Proof of Service Notice of Direct Request Proceeding form to confirm personal service.

Based on the written submissions of the landlord and in accordance with section 89 of the *Act*, I find that the Direct Request Proceeding documents were duly served to Tenant D.C. on July 6, 2022.

I find the landlord has not submitted a copy of a Proof of Service Notice of Direct Request Proceeding form establishing service of the Direct Request documents to Tenant M.T. For this reason, I will only proceed with the portion of the landlord's application naming Tenant D.C. as a respondent.

#### Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord 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 landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on December 17, 2021, indicating a monthly rent of \$1,500.00, due on the first day of each month for a tenancy commencing on December 16, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 3, 2022, for \$1,500.00 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 June 14, 2022
- A copy of a Proof of Service Notice to End Tenancy form which was signed by Tenant D.C. and indicates that the 10 Day Notice was served to Tenant D.C. in person on June 3, 2022
- 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 Tenant D.C. was obligated to pay the monthly rent in the amount of \$1,500.00, as per the tenancy agreement.

In accordance with section 88 of the *Act*, I find that the 10 Day Notice was duly served to Tenant D.C. on June 3, 2022.

I accept the evidence before me that Tenant D.C. 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 D.C. 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, June 14, 2022.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$1,500.00, the amount claimed by the landlord for unpaid rent owing for June 2022.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on Tenant D.C. Should Tenant D.C. **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 sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,600.00 for rent owed for June 2022 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and Tenant D.C. must be served with **this Order** as soon as possible. Should Tenant D.C. 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 landlord's application for a Monetary Order naming Tenant M.T. as a respondent without 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: July 22, 2022

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Residential Tenancy Branch