



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPU-DR, MNU-DR

### Preliminary Matters

I note that the tenants' rental address on the Application for Dispute Resolution submitted by the landlord is slightly different than the rental address shown on the tenancy agreement, the 10 Day Notice, and all other documents submitted with the Application. Section 64(3)(c) of the *Act* allows me to amend the application to match the tenancy agreement, 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 landlord to obtain an Order of Possession based on unpaid rent and utilities and to obtain monetary compensation for unpaid rent and utilities.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the landlord on September 1, 2022.

### Issue(s) to be Decided

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

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

### Notice of Dispute Resolution Proceeding – Direct Request

In this type of matter, the landlord 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*.

Policy Guideline # 39 provides the key elements that need to be considered when making an application for Direct Request

Proof of service of the Notice of Direct Request Proceeding may take the form of:

- registered mail receipt and printed tracking report;
- a receipt signed by the tenant, stating they took hand delivery of the document(s); or
- **a witness statement that they saw the landlord deliver the document(s).**

The landlord submitted a copy of a Proof of Service Notice of Direct Request Proceeding form which declares that on September 16, 2022, the landlord served Tenant X.Z. the Notice of Dispute Resolution Proceeding – Direct Request to the door of the rental unit. However, I find there is no signature of a witness on the form to confirm service of the Direct Request documents to Tenant X.Z.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding – Direct Request to Tenant X.Z. and for this reason, I will only proceed with the portion of the landlord's application naming Tenant V.Z. as a respondent.

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 attaching a copy to a door at the address at which the tenant resides.

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

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on September 16, 2022, the landlord served Tenant V.Z. the Notice of Dispute Resolution Proceeding - Direct Request by attaching the documents to the door of the rental unit. The landlord had a witness sign the Proof of Service Notice of Direct Request Proceeding form to confirm this service.

Based on the written submissions of the landlord and in accordance with sections 89(2) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on September 16, 2022 and are deemed to have been received by Tenant V.Z. on September 19, 2022, the third day after their posting.

I find that the landlord has served Tenant V.Z. the Notice of Dispute Resolution Proceeding - Direct Request to the door of the rental unit at which Tenant V.Z. resides, and for this reason, the monetary portion of the landlord's application for unpaid rent and utilities is dismissed, with leave to reapply.

### 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, indicating a monthly rent of \$3,750.00, due on the first day of each month for a tenancy commencing on February 20, 2022
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 13, 2022, for \$3,750.00 in unpaid rent and \$145.45 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 July 27, 2022
- 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 12:35 pm on July 13, 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 V.Z. was obligated to pay the monthly rent in the amount of \$3,750.00, 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 13, 2022 and is deemed to have been received by Tenant V.Z. on July 16, 2022, three days after its posting.

I accept the evidence before me that Tenant V.Z. 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 V.Z. 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, July 27, 2022.

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

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on Tenant V.Z. Should Tenant V.Z. **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.

I dismiss the landlord's application for a Monetary Order for unpaid rent and 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: October 17, 2022

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Residential Tenancy Branch