



# 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 September 1, 2022.

The landlord submitted a copy of two Proof of Service Notice of Direct Request Proceeding forms which declare that on September 20, 2022, the landlord sent each tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlord provided a copy of two Canada Post Customer Receipts containing the tracking numbers to confirm they served the tenants.

Based on the written submissions and evidence of the landlord and in accordance with sections 89(1) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on September 20, 2022 and are deemed to have been received by the tenants on September 25, 2022, the fifth day after they were mailed.

### **Issues 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 tenant D.E. on July 23, 2020, indicating a monthly rent of \$1,780.00, due on the first day of each month for a tenancy commencing on August 1, 2020;
- a copy of one Notice of Rent Increase form showing the rent being increased from \$1,780.00 to the monthly rent amount of \$1,806.70;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated August 8, 2022, for \$5,420.10 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 August 17, 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 3:30pm on August 8, 2022; and;
- a copy of a Direct Request Worksheet showing the rent owing during the relevant period.

### Analysis

Paragraph 12 (1) (b) of the Residential Tenancy Regulation establishes that a tenancy agreement is required to be “signed and dated by both the landlord and the tenant.”

I find that tenant M.D. has not signed the tenancy agreement, which is a requirement of the direct request process. For this reason, the portion of the landlord’s application against tenant M.D. is dismissed without leave to reapply.

I have reviewed all documentary evidence and I find that tenant D.E. signed the tenancy agreement and was obligated to pay the monthly rent in the amount of \$1,806.70.

In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on August 8, 2022 and is deemed to have been received by tenant D.E. on August 11, 2022, three days after it was posted to the door.

I accept the evidence before me that tenant D.E. 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.E. is conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, August 21, 2022.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award against tenant D.E. in the amount of \$5,420.10, the amount claimed by the landlord for unpaid rent owing for June 2022 to August 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.E. Should tenant D.E. 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 \$5,520.10 for rent owed for June 2022 to August 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.E. must be served with **this Order** as soon as possible. Should tenant D.E. 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.D. 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: October 19, 2022

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Residential Tenancy Branch