

## **DECISION**

### **Introduction**

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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 the landlord's Application for Dispute Resolution (Application) for:

- an Order of Possession based on unpaid rent pursuant to sections 46 and 55

### **Service of Notice of Dispute Resolution Proceeding - Direct Request**

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The landlord submitted three signed Proof of Service Landlord's Notice of Direct Request Proceeding forms which declare that each tenant was served with the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) in accordance with section 89 of the Act. The landlord had a witness sign the Proof of Service Notice of Direct Request Proceeding forms to confirm service. Based on the written submissions of the landlord and in accordance with section 90 of the Act:

- I find that Tenant D.G. was served on September 28, 2022 and is considered to have received the Proceeding Package on October 1, 2022, the third day after it was posted on the door of the rental unit.
- I find that Tenant M.T.F. was served on September 28, 2022 and is considered to have received the Proceeding Package on October 1, 2022, the third day after it was posted on the door of the rental unit.
- I find that Tenant L.F. was served on September 28, 2022 and is considered to have received the Proceeding Package on October 1, 2022, the third day after it was posted on the door of the rental unit.

### **Issue(s) to be decided**

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Is the landlord entitled to an Order of Possession based on unpaid rent?

## Background and Evidence

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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 evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord on May 30, 2022, and Tenant D.G. on June 1, 2022, indicating a current monthly rent of \$1,800.00, due on the first day of the month for a tenancy commencing on June 1, 2022;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 1, 2022, for \$1,650.00 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 September 14, 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 1:15 pm on September 1, 2022;
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

## Analysis

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### **Is the landlord entitled to an Order of Possession based on unpaid rent?**

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy pursuant to section 46(5).

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.T.F. and Tenant L.F. have not signed the tenancy agreement, which is a requirement of the Direct Request process. For this reason, I will only proceed with the portion of the landlord's application naming Tenant D.G. as a respondent.

I find that Tenant D.G. was obligated to pay the monthly rent in the amount of \$1,800.00, 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 September 1, 2022 and is deemed to have been received by Tenant D.G. on September 4, 2022, three days after its posting.

I accept the evidence before me that Tenant D.G. 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.G. 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, September 14, 2022.

Therefore, I find that the landlord is entitled to an Order of Possession based on unpaid rent pursuant to sections 46 and 55.

## Conclusion

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I grant an Order of Possession to the landlord **effective two (2) days after service of this Order on Tenant D.G.** Should Tenant D.G. or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 31, 2022

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Residential Tenancy Branch