

## **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 of the Act
- a Monetary Order for unpaid rent pursuant to section 67 of the Act (\$857.68)
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act (\$100.00)

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

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The landlord submitted a copy of a witnessed Proof of Service Notice of Direct Request Proceeding form which declares that on October 7, 2022 the landlord served the tenant the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) by posting it to the door of the rental unit. In accordance with sections 89(2) and 90 of the Act and based on the written submissions and evidence of the landlord:

- I find that the landlord served the tenant the Proceeding Package on October 7, 2022, and it is deemed to have been received by the tenant on October 10, 2022, three days after it was posted to the door.

### **Issues to be decided**

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

Is the landlord entitled to a Monetary Order for unpaid rent? (\$857.68)

Is the landlord entitled to recover the filing fee for this application from the tenant? (\$100.00)

### **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 and the tenant on December 27, 2019, indicating a monthly rent of \$845.00, due on the first day of the month for a tenancy commencing on January 1, 2020;
- a copy of one Notice of Rent Increase form showing the rent being increased from \$845.00 to the monthly rent amount of \$857.68;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated September 12, 2022, for \$857.68 in unpaid rent. The 10 Day Notice provides that the tenant 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 22, 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 tenant's door at 5:00 pm on September 12, 2022; and;
- a copy of a Direct Request Worksheet showing the rent owing during the relevant period.

## Analysis

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I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on September 12, 2022 and is deemed to have been received by the tenant on September 15, 2022, three days after it was posted to the door of the rental unit.

I accept the evidence before me that the tenant 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 the tenant 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, September 25, 2022.

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

In this type of matter, the landlord must prove they served the tenant 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 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.

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

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

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I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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 section 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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.

The landlord's application for a Monetary Order for unpaid rent is dismissed 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: November 10, 2022

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Residential Tenancy Branch