

## **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 (\$9,600.00)
- authorization to recover the filing fee for this application from the tenants 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 two witnessed Proof of Service Notice of Direct Request Proceeding forms which declare that on November 3, 2022, they served the tenants the Notices of Dispute Resolution Proceeding - Direct Request (Proceeding Packages) by posting them 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 on November 3, 2022, the landlord served the Proceeding Packages to the tenants by posting them to the door of the rental unit, and they are deemed to have been received by the tenants on November 6, 2022, three days after they were 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? (\$9,600.00)

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

## Background and Evidence

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The landlord submitted the following evidentiary material:

- a copy of a residential tenancy agreement which was signed by the landlord on September 1, 2020 and the tenants on September 2, 2020, indicating a monthly rent of \$1,200.00, due on the first day of the month for a tenancy commencing on September 1, 2020;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated September 27, 2022, for \$8,300.00 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 October 12, 2022;
- a copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to tenant L.G. at 5:40 pm on September 27, 2022; and;
- a copy of a Direct Request Worksheet with an attached schedule showing the rent owing and paid during the relevant period.

## 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) of the Act.

I have reviewed all documentary evidence and in accordance with section 88 of the Act, I find that the 10 Day Notice was served to the tenants on September 27, 2022.

I accept the evidence before me that the tenants have 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 tenants are 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, October 12, 2022.

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

### **Is the landlord entitled to a Monetary Order for unpaid rent?**

In this type of matter, the landlord must prove they served the tenants with the Notices 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 Notices of Dispute Resolution Proceeding - Direct Request to the door of the rental unit at which the tenants reside, and for this reason, the monetary portion of the landlord's application for unpaid rent is dismissed, with leave to reapply.

### **Is the landlord entitled to recover the filing fee for this application from the tenants?**

As the landlord was partially successful in their 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 (2) days after service of this Order on the tenant(s)**. Should the tenant(s) 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.

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(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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 pursuant to section 67 of the Act 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: December 8, 2022

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Residential Tenancy Branch