

## **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

### **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 November 5, 2022 they 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 Proceeding Package to tenant L.D. by posting it to the door of the rental unit on November 5, 2022, and it was deemed to have been received by the tenant on November 8, 2022, the third day after it was posted to the door.

### **Issue 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 and the tenant on August 25, 2022, indicating a monthly rent of \$3,000.00, due on the twentieth day of the month for a tenancy commencing on August 25, 2022;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated September 26, 2022, for \$3,000.00 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 October 6, 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 8:50 am on September 27, 2022; and;
- a copy of a Direct Request Worksheet showing the rent owing 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 sections 88 and 90 of the Act, I find that the 10 Day Notice was served on September 27, 2022 and is deemed to have been received by the tenant on September 30, 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, October 10, 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.

## 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**. Should the tenant 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: December 14, 2022

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Residential Tenancy Branch