



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPRM-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 for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted two signed Proofs of Service of the Notice of Direct Request Proceeding which declare that on November 24, 2017, the landlord sent the tenants the Notices of Direct Request Proceeding by registered mail to an address that is not the rental unit. The landlord provided copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. However, as the landlord sent the Notices of Direct Request Proceeding to the tenants at an address other than the rental unit, I find that I am not able to confirm service of the Notices of Direct Request Proceeding through the direct request process.

### Issue(s) 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

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by Tenant D.W. on August 21, 2017 and by Tenant B.B. on August 22, 2017, indicating a monthly

rent of \$3,350.00, due on the first day of each month for a tenancy commencing on September 01, 2017;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 07, 2017 for \$3,350.00 in unpaid rent (the 10 Day Notice). 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 November 17, 2017;
- 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 3:10 p.m. on November 07, 2017;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy;
- A copy of an Application for Substituted Service dated November 23, 2017; and
- A copy of a Notice to End Tenancy Agreement dated November 14, 2017 issued by the tenants to the landlord, including a forwarding address and indicating the last day of tenancy would be December 01, 2017 (the Tenants' Notice to End Tenancy).

### Analysis

Direct request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability of the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

The onus is on the landlord to present evidentiary material that does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlords cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

I find that the Notices of Direct Request Proceeding for each of the tenants were sent to an address that is not the rental unit and, accordingly, I am not able to confirm service

of the Notices. Although the landlord has sent the Notices of Direct Request Proceedings to the forwarding address given by the tenants in the Tenants' Notice to End Tenancy, I find no evidence to support the fact that the tenants are able to receive mail at that address prior to the tenants' vacate date of December 01, 2017 that was set out in the Tenants' Notice to End Tenancy.

I note the landlord uploaded into evidence an Application for Substitute Service asking to serve the tenants with the Notice of Dispute Resolution – Direct Request Proceeding by email; however, the landlord then proceeded to serve the Notice of Direct Request proceeding to the tenants by registered mail. It should be noted that an Order for substituted service must be obtained prior to serving the requisite documents in a different manner. As well, as set out on page 2 of the Application for Substituted Service, "Arbitrators will not normally consider a request made at the time an application is made unless there are **extraordinary circumstances** (e.g., the other party lives in another country and registered mail is not available or practical)". For information on applying for substituted service orders, our website is: [gov.bc.ca/landlordtenant](http://gov.bc.ca/landlordtenant). You may also contact an Information Officer with the Residential Tenancy Branch at:

**Lower Mainland:** 604-660-1020

**Victoria:** 250-387-1602

**Elsewhere in BC:** 1-800-665-8779

Lastly, it should also be noted that if the tenants did vacate the rental unit, then an Order of Possession is not required and the Direct Request process is not the method in which to obtain a monetary order.

For the reasons set out above, I dismiss the landlord's application for an Order of Possession and Monetary Order based on the 10 Day Notice with leave to reapply.

As the landlord was unsuccessful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice with leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid rent with leave to reapply.

I dismiss the landlord's application for an Order for the recovery of the filing fee, 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 *Act*.

Dated: November 29, 2017

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Residential Tenancy Branch