



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Nest Property Management and Real Estate  
Service and [tenant name suppressed to protect privacy]

## **INTERIM DECISION**

Dispute Codes      OPR-DR, 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 a signed Proof of Service Notice of Direct Request Proceeding which declares that on October 30, 2020, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on November 4, 2020, the fifth day after their registered mailing.

### 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 relevant evidentiary material:

- A copy of a residential tenancy agreement which names a landlord who is not the applicant and was signed by the tenant on August 2, 2019, indicating a monthly rent of \$1,000.00, due on the first day of each month for a tenancy commencing on August 15, 2019;

- A copy of a Schedule of Parties (RTB-26) form listing the applicant's name and address;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 6, 2020, for \$3,050.00 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 21, 2020;
- 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 10:30 am on October 9, 2020;
- A copy of a receipt dated October 14, 2020 indicating the tenant made of payment of \$200.00 towards arrears; and
- A Direct Request Worksheet and ledger showing the rent owing and paid during the relevant portion of this tenancy.

### Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material 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 landlord 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 have reviewed all documentary evidence and I find that the landlord's name on the tenancy agreement does not match the landlord's name on the Application for Dispute Resolution. The applicant submitted a copy of a Schedule of Parties form listing the applicant's name and address.

Along the top of the Schedule of Parties form the wording reads as follows:

*"If the form you are completing does not have enough room for additional applicants or respondents, use this Schedule of Parties to continue."*

I find that the tenancy agreement submitted into evidence only lists one landlord's name, leaving enough room on the form for a second landlord, meaning a Schedule of Parties was not required for the tenancy agreement.

I find I am not able to confirm whether the applicant was one of the landlords at the time the tenancy agreement was entered into, or whether the landlord changed throughout the course of the tenancy.

As this is an *ex parte* proceeding that does not allow for any clarification of the facts, I have to be satisfied with the documentation presented. The discrepancy in the landlord's name raises a question that can only be addressed in a participatory hearing.

### Conclusion

I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. I find that a participatory hearing to be conducted by an arbitrator appointed under the *Act* is required in order to determine the details of the landlord's application.

**Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 89 of the *Act*.**

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. Fact sheets are available at <http://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/information-sheets/rtb114.pdf> that explain evidence and service requirements.

For more information see our website at: [gov.bc.ca/landlordtenant](http://gov.bc.ca/landlordtenant). If either party has any questions they may 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

This interim 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 19, 2020

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Residential Tenancy Branch