



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 filed by the Landlord for an order of possession and a monetary order based on unpaid rent, and an order granting recovery of the filing fee.

The Landlord submitted a signed Proof of Service - Notice of Direct Request Proceeding document which declares that the Landlord served the Tenant with the Notice of Direct Request Proceeding and supporting documents by registered mail on January 7, 2021. The Landlord provided copies of the Canada Post 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 the Tenant is deemed to have received these documents on January 12, 2021, five days after they were mailed.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. Is the Landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?
3. Is the Landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

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 relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the Landlord and the Tenant on October 30, 2018, indicating a monthly rent of \$1,800.00, due on the first day of each month for a tenancy commencing on October 30, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2020 for \$3,067.00 in unpaid rent (the “10 Day Notice”). 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 December 15, 2020;
- A copy of a Proof of Service - Notice to End Tenancy form which indicates that the 10 Day Notice was served on the Tenant by attaching a copy to the Tenant’s door or other conspicuous place on December 2, 2020, which service was witnessed by D.S.;
- A copy of a Repayment Plan dated September 21, 2020 describing ten monthly installment payments in the amount \$191.75 commencing October 1, 2020; and
- A copy of a Direct Request Worksheet showing the rent owing (including rent due under the Repayment Plan) and paid during the relevant portion of this tenancy.

### Analysis

I have reviewed all documentary evidence and I find that the Tenant was obligated to pay the monthly rent in the amount of \$1,800.00, as per the tenancy agreement, plus a monthly installment payment of \$191.75, as per the Repayment Plan commencing October 1, 2020.

In accordance with sections 88 and 90 of the *Act*, I find that the Tenant received the 10 Day Notice on December 5, 2020, three days after it was served on the Tenant by attaching a copy to the Tenant's door or other conspicuous place.

Although the Direct Request Worksheet indicates a rent payment received on December 10, 2020, I accept the evidence before me that the Tenant 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 December 15, 2020, the corrected effective date of the 10 Day Notice.

Therefore, I find the Landlord is entitled to an order of possession which will be effective two days after it is served on the Tenant.

With respect to the Landlord's request for a monetary award for unpaid rent, I note the Direct Request Worksheet indicates a payment of \$1,800.00 was made on December 10, 2020, reducing the amount owed in December to \$1,267.00 (\$3,067.00 - \$1,800.00). I also note the Direct Request Worksheet indicates that the Landlord anticipated installment payments began on September 1, 2020 whereas the Repayment Plan confirms installment payments were to begin on October 1, 2020. I accept this was an error and impacts my decision only with respect to the amount of rent outstanding. Given the clarity of the Direct Request Worksheet, this is a simple calculation. Subtracting the first installment payment claimed by the Landlord from the balance determined above, outstanding rent is further reduced to \$1,075.25 (\$1,267.00 - \$191.75). I find the Landlord is entitled to a monetary award for unpaid rent to December 31, 2020 in the amount of \$1,075.25.

Although the Landlord's application includes a claim for rent due on January 1, 2021, the Direct Request process prevents a landlord from claiming rent owed for a period beyond the date of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. In this case, the 10 Day Notice was issued to the Tenant in relation to rent due for the month of December 2020. Therefore, within the purview of the Direct Request process, I cannot hear the monetary portion of the Landlord's application for rent due on January 1, 2021 or thereafter. The Landlord is at liberty to apply to recover any outstanding rent or other compensation to which the Landlord may be entitled at the Landlord's discretion.

As the Landlord is successful, I find the Landlord is also entitled to a monetary award in the amount of \$100.00 in recovery of the filing fee paid to make the application.

### Conclusion

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$1,175.25 for rent due to December 31, 2020 and for the recovery of the filing fee. The monetary order must be served on the Tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: January 22, 2021

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Residential Tenancy Branch