



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes OPR-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 based on unpaid rent and to recover the filing fee.

The Landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that the Landlord served the Tenant with a Notice of Dispute Resolution Proceeding and supporting documents by registered mail on November 24, 2021. Service in this manner was supported by Canada Post registered mail receipts which included the tracking number. Pursuant to sections 89 and 90 of the *Act*, I find these documents are deemed to have been received by the Tenant on November 29, 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 recover the filing fee pursuant to sections 67 and 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 signed by the parties on May 1, 2019, indicating a monthly rent in the amount of \$750.00 due on the first day of each month, for a tenancy commencing on May 1, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 5, 2021 for \$750.00 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 November 15, 2021;
- A copy of a signed Proof of Service Notice to End Tenancy document which indicates that the 10 Day Notice was served on the Tenant in person on November 5, 2021, which service was witnessed by C.E.; and
- A copy of a Direct Request Worksheet showing the rent due on November 1, 2021 (\$750.00) and partial payments made on November 5, 2021 (\$230.00) and November 8, 2021 (\$230.00).

### Analysis

I have reviewed all documentary evidence and I find that the Tenant was obligated to pay monthly rent in the amount of \$750.00.

I find that the Tenant was served with and received the 10 Day Notice on November 5, 2021, the day it was served in person.

Although I accept that partial payments were made on November 5 and 8, 2021, I also accept the evidence before me that the Tenant failed to pay the rent owed in full within five days after receipt of the 10 Day Notice 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 section 46(5) of the *Act* to have accepted that the tenancy ended on November 15, 2021, the 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.

As the Landlord has been successful, I find the Landlord is entitled to recover the \$100.00 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 must be 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 \$100.00 in 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 4, 2022

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Residential Tenancy Branch