



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPU-DR, MNU-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 landlords to obtain an Order of Possession based on unpaid rent and utilities, to obtain monetary compensation for unpaid rent and utilities, and to recover the filing fee paid for the application.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the landlords on April 21, 2022.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent and utilities pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent and utilities pursuant to section 67 of the *Act*?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Notice of Dispute Resolution Proceeding – Direct Request

In this type of matter, the landlords must prove they served the tenants with the Notice of Dispute Resolution Proceeding– Direct Request and all documents in support of the application in accordance with section 89 of the *Act*.

Section 89(1) of the *Act* does not allow for the Notice of Dispute Resolution Proceeding - Direct Request to be given to the tenant by leaving a copy with an adult who resides with the tenant.

Section 89(2) of the *Act* does allow for the Notice of Dispute Resolution Proceeding - Direct Request to be given to the tenant by leaving a copy with an adult who resides with the tenant, only when considering an Order of Possession for the landlord.

The landlords submitted one signed Proof of Service Notice of Direct Request Proceeding form which declares that on May 5, 2022, the landlords served each tenant the Notice of Dispute Resolution Proceeding - Direct Request by handing both sets of documents to Tenant D.D. The landlords had Tenant D.D. sign the Proof of Service Notice of Direct Request Proceeding form to confirm this service.

Based on the written submissions of the landlords and in accordance with section 89(1) of the *Act*, I find that the Direct Request Proceeding documents were duly served to Tenant D.D. on May 5, 2022. In accordance with section 89(2) of the *Act*, I find that the Direct Request Proceeding documents were duly served to Tenant H.V. on May 5, 2022.

I find that the landlords have served the Notice of Dispute Resolution Proceeding - Direct Request to Tenant H.V. by leaving a copy with Tenant D.D., an adult who resides with Tenant H.V. For this reason, the monetary portion of the landlords' application concerning unpaid rent, naming Tenant H.V. as a respondent, is dismissed without leave to reapply.

### 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 landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenants on October 5, 2019, indicating a monthly rent of \$1,400.00, due on the first day of each month for a tenancy commencing on October 5, 2019
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 9, 2022, for \$1,400.00 in unpaid rent. 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 April 22, 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 tenants' door at 11:23 am on April 9, 2022

- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

### Analysis

I have reviewed all documentary evidence and I find that the tenants were obligated to pay the monthly rent in the amount of \$1,400.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on April 9, 2022 and is deemed to have been received by the tenants on April 12, 2022, three days after its posting.

I accept the evidence before me that the tenants have 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 tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, April 22, 2022.

In a Direct Request Proceeding, a landlord cannot pursue rent or utilities owed for an amount beyond the amount noted on the 10 Day Notice that was issued to the tenant. I find the 10 Day Notice only lists amounts owing for unpaid rent. For this reason, I cannot hear the portion of the landlords' monetary claim for unpaid utilities.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary award in the amount of \$1,400.00, the amount claimed by the landlords for unpaid rent owing for April 2022.

As the landlords were partially successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlords a Monetary Order in the amount of \$1,500.00 for rent owed for April 2022 and for the recovery of the filing fee for this application. The landlords are provided with this Order in the above terms and Tenant D.D. must be served with **this Order** as soon as possible. Should Tenant D.D. fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the portion of the landlords' application for a Monetary Order for unpaid rent owing for April 2022, naming Tenant H.V. as a respondent, without leave to reapply.

I dismiss the landlords' application for a Monetary Order for unpaid utilities with 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 *Residential Tenancy Act*.

Dated: June 01, 2022

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Residential Tenancy Branch