



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPR, MNR

This matter proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order for unpaid utilities.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 14, 2012, the landlord served the tenant with the Notice of Direct Request Proceeding by way of Registered Mail.

Section 90 of the Act provides that a document served in this manner is deemed to have been received on the 5<sup>th</sup> day after service. Based on the written submissions of the landlord, I find that the tenant has been duly served with the Direct Request Proceeding documents.

### Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid utilities?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding;
- A copy of the residential tenancy agreement which was signed by the parties on February 24, 2012, indicating that the tenant is obligated to pay \$1,100.00 in rent in advance on the first day of each month, and “additional terms” signed by the parties on February 24, 2012, as well as on April 16, 2012, indicating that the tenant is obligated to pay 70% of gas and electric bills by their due date.
- A copy of the written demand dated August 20, 2012, instructing the tenant to make payment for utilities in the amount of \$220.55.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on October 19, 2012 with a stated effective vacancy date of October 29, 2012, for \$220.55 in unpaid utilities following a written demand on August 20, 2012.
- A copy of the Proof of Service of the Notice to End Tenancy showing that the landlord served the notice to end tenancy on the tenant in-person on October 19, 2012, and

Section 90 of the Act provides that as the notice to end tenancy was served in-person on October 19, 2012, the tenant is deemed to have received the notice on that same date.

The Notice restates section 46(4) of the Act which provides that the tenant had 5 days to pay the utilities in full or apply for Dispute Resolution. The tenant did not apply to dispute the Notice to End Tenancy within 5 days from the date of service and the landlord alleged that the tenant did not pay the outstanding utilities.

#### Analysis

I find that the tenant received the notice to end tenancy on October 19, 2012. I accept the landlord's evidence and I find that the tenant neither paid the outstanding utilities, nor applied to dispute the notice. The tenant is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I grant the landlord an order of possession which must be served on the tenant. Should the tenant fail to comply, the order may be filed for enforcement in the Supreme Court.

I accept the evidence before me that the tenant has failed to pay a total of \$220.55 in utilities following a written demand dated August 20, 2012. I find that the landlord is entitled to recover the outstanding utilities and I grant the landlord a monetary order for \$220.55.

#### Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$220.55**. This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court

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: November 22, 2012.

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Residential Tenancy Branch