



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Associated Property Management (2001) Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened.

I note that while the landlord submitted their Application for Dispute Resolution naming two respondents as those both listed on the tenancy agreement as tenants the tenancy agreement was only signed by the named female tenant. As such, I amend the landlord's Application to exclude the male occupant as he is not a party to the tenancy agreement.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 15, 2014 the landlord served each tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5<sup>th</sup> day after it is mailed.

Based on the written submissions of the landlord, I find that both tenants have been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

### Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on January 3, 2013 for a 1 year fixed term tenancy beginning on January 15, 2013 that converted to a month to month tenancy on January 15, 2014 for the monthly

rent of \$1,700.00 due on the 1<sup>st</sup> of each month and a security deposit of \$850.00 was paid. The tenancy agreement does not contain a clause that requires the tenant to pay the landlord any utilities, however clause 5(5) states: "If any unpaid sums charged to the tenant, including utility charges are unpaid for more than 30 days after the tenant is given a written demand for payment of them , the landlord may treat the unpaid utility charges as unpaid rent and may give notice to end a tenancy under this section";

- A copy of a Notice of Rent Increase dated January 30, 2014 noting an increase of \$200.00 to be effective May 1, 2014 and a typewritten note signed by the tenant agreeing to the \$200.00 rental increase dated February 3, 2014;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on July 28, 2014 with an effective vacancy date of August 6, 2014 due to \$1,000.00 in unpaid rent and \$504.04 in unpaid utilities following a written demand dated June 1, 2014; and
- A copy of a letter dated April 30, 2014 from the landlord to the tenant and an invoice from the utility provider demanding payment of utilities in the amount 504.64.

Documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the month of July 2014 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent personally on July 28, 2014 at 2:00 p.m. and that this service was witnessed by a third party.

The Notice states the tenant had five days to pay the rent and utilities or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent and utilities in full or apply to dispute the Notice to End Tenancy within five days.

### Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on July 28, 2014 and the effective date of the notice is amended to August 7, 2014, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenant is conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

While the tenancy agreement does indicate in clause 5(5) that any unpaid utilities will be treated by the landlord as unpaid rent and they will give notice to end the tenancy Section 46 requires that in order to do so the tenancy agreement requires that the tenant pay the landlord these utility charges.

As I find there is no clause in the tenancy agreement that requires the tenant to pay any utility charges to the landlord I find the landlord cannot, for the purposes of this Notice or the Direct Request process, consider the unpaid utilities to be unpaid rent. Therefore, I dismiss the portion of the landlord's claim for unpaid utilities in the amount of \$504.64, with leave to reapply through the participatory process.

### Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,000.00** comprised of rent owed.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: August 21, 2014

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Residential Tenancy Branch

