



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

OPR, MNR

### 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 for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 24, 2015, the landlords served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received 5 days after service.

Based on the written submissions of the landlords, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on March 29, 2015, the fifth day after their registered mailing.

### Issue(s) to be Decided

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

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

### Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlords and the tenant on January 26, 2015, indicating a monthly rent of \$1,200.00 due on the first day of the month for a tenancy commencing on February 1, 2015. The tenancy agreement includes an addendum item which demonstrates that the tenant is responsible for payment of 40% of all utilities;

- A letter dated February 15, 2015, addressed to the tenant, in which the landlords ask that the tenant pay her portion of a gas bill in the amount of \$131.11 and her portion of a hydro bill in the amount of \$67.54, the sum of which totals an amount of \$198.65;
- A Monetary Order Worksheet showing the rent and utilities owing during the portion of this tenancy in question, on which the landlords establish a monetary claim in the amount of \$1,398.65, comprised of outstanding rent owing in the amount of \$1,200.00 for March 2015 and outstanding utilities owing in the amount of \$198.65. The landlords contend that the tenant owes \$131.11 for her portion of a gas bill, and \$67.54 for February 2015 for the portion of a hydro bill;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the Notice) dated March 16, 2015, which the landlords state was served to the tenant on March 16, 2015 for \$1,398.65 in unpaid rent and utilities due on March 1, 2015, with a stated effective vacancy date of March 16, 2015; and
- A copy of the Proof of Service of the Notice showing that the male landlord "ST" served the Notice to the tenant by way of personal service via hand-delivery at 10:02 pm on March 16, 2015. The Proof of Service establishes that the service was witnessed by "AA" and a signature for AA is included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent and utilities in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlords alleged that the tenant did not pay the rental and utilities' arrears.

### Analysis

I have reviewed all documentary evidence and find that in accordance with section 88 of the *Act* the tenant was duly served with the Notice on March 16, 2015.

Subsection 46(6) of the *Act*, provides, in part, the following:

If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid 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 under this section.

I find that the tenancy agreement included an addendum item which established that the tenant is responsible for payment of 40% of all utilities. The landlords provided a written demand letter to the tenant for payment of outstanding utilities and, consequently, after a period of 30 days had elapsed, were able to treat the unpaid utilities as unpaid rent in accordance with subsection 46(6) of the *Act*.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,200.00, as established in the tenancy agreement, and further find that the tenant was responsible for payment of 40% of all utilities. I accept the evidence before me that the tenant has failed to pay outstanding rental arrears in the amount of \$1,200.00 in rent owing for the month of March 2015 and has failed to pay the sum of utilities owed in the amount of \$198.65. I find that the tenant received the Notice on March 16, 2015. I accept the landlords' undisputed evidence and find that the tenant did not pay the rent and utilities owed in full within the 5 days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that 5-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 the corrected effective date of the Notice, March 26, 2015.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary Order of \$1,398.65 for unpaid rent and utilities owing for March 2015.

### 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 section 67 of the *Act*, I find that the landlords are entitled to a monetary Order in the amount of \$1,398.65 for unpaid rent and utilities owing for March 2015. The landlords are provided with these Orders in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: April 2, 2015

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Residential Tenancy Branch

