



# Dispute Resolution Services

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

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 24, 2015, the landlord served the tenant with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on April 24, 2015.

### Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

### Background and Evidence

The landlord 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 landlord’s agent and the tenant on October 20, 2014, indicating a monthly rent of \$1,450.00 due on the first day of the month for a tenancy commencing on October 20, 2014. The tenancy agreement included an agreement titled “Utilities Agreement”

which demonstrates that the tenant is responsible for payment of 40% of the charge for gas and hydro;

- A notice dated April 2, 2015 addressed to the tenant, drafted by the landlord, in which the landlord asks that the tenant pay the portion of the balance of overdue utilities in the amount of \$86.19 and overdue rent in the amount of \$1,450.00;
- A Monetary Order Worksheet showing the rent and utilities owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$511.59. The landlord indicates that the monthly rent owed for April 2015 was \$1,450.00 and a partial payment of \$300.00 was provided on April 1, 2015, and a partial payment of \$725.00 was provided on April 18, 2015, resulting in a balance of rent owed in the amount of \$425.00 for April 2015. The landlord indicates that the tenant owes \$51.44 for her portion of a gas bill, and owes \$60.75 for her portion of a hydro bill. The landlord establishes that a partial payment of \$26.00 was provided, resulting in a balance of \$86.19 owed for utilities;
- A copy of the lower portion of a gas bill and the lower portion of a hydro bill. The landlord did not provide a complete copy of either bill, rather, only the lower “stub” portion which establishes the total amount owed for each respective bill;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the Notice) dated April 18, 2015, which the landlord states was served to the tenant on April 18, 2015 for \$1,450.00 due on April 1, 2015 in unpaid rent and \$86.19 for unpaid utilities due on April 2, 2015, with a stated effective vacancy date of April 28, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of personal service via hand-delivery at 8:30 pm on April 18, 2015. The personal service was confirmed as the tenant acknowledged receipt of the Notice by signing the Proof of Service form on April 18, 2015.

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent 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 landlord alleged that the tenant did not pay the rental 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 April 18, 2015.

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

On the monetary order worksheet, the landlord indicates that as part of the monetary claim, an amount of \$86.19 for unpaid utilities is sought for the sum of the gas and hydro bills which were to be paid by the tenant by April 2, 2015. Section 46(6) of the *Act* provides, in part, the following with respect to unpaid utility charges:

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 a term which established that the tenant is responsible for payment of 40% of the gas and hydro utilities. The landlord provided a copy of a demand notice dated April 2, 2015, in which the tenant is directed to pay the outstanding utilities in the amount of \$86.19. If a tenant is provided a written demand to provide payment of a utility charge for which she is responsible, the landlord may treat the unpaid utility charges as unpaid rent only if the utility charges remain unpaid more than 30 days after the written demand. As the landlord issued a Notice for unpaid utilities on April 18, 2015, I find that the landlord has not waited more than 30 days from the date of the written demand to the tenant, and has, therefore, issued the Notice with respect to unpaid utilities to the tenant on a date earlier than permitted under the *Act*.

Based on the foregoing, I am unable to hear the landlord's claim in the amount of \$86.19 with respect to the unpaid utilities, and therefore, I dismiss that portion of the landlord's application with respect to unpaid utilities with leave to reapply. Therefore, I will address only the portion of the monetary claim which arises from unpaid rent as represented on the landlord's monetary worksheet, which the landlord has demonstrated to be \$425.00.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,450.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay outstanding rental arrears in the amount of \$425.00, comprised of the balance of rent owed for the month of April 2015. I find that the tenant received the Notice on April 18, 2015. I accept the landlord's undisputed evidence and find that the tenant did not pay the rent 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 effective date of the Notice, April 28, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$425.00 for unpaid rent owing for April 2015, as of April 24, 2015.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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 landlord is entitled to a monetary Order in the amount of \$425.00 for unpaid rent owing for April 2015, as of April 24, 2015. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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: May 4, 2015

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Residential Tenancy Branch

