



# 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 utilities and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 12, 2015, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord 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. The Proof of Service form also establishes that the service was witnessed by "KL" and a signature for KL is included on the form.

Based on the written submissions of the landlord, 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 May 17, 2015, the fifth day after their registered mailing.

### 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 and utilities 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 and the tenant on August 8, 2014, indicating a monthly rent of \$1,100.00 due on the first day of the month for a tenancy commencing on September 1, 2014;

- 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 \$1,392.40, comprised of outstanding rent owing for May 2015 in the amount of \$1,300.00 and unpaid utilities owed in the amount of \$92.40;
- A copy of a letter, dated April 10, 2015, addressed to the tenant, in which the landlord requests that the tenant provide payment for the portion of the utilities owed by the tenant;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent and utilities (the Notice) dated May 2, 2015, which the landlord states was served to the tenant on May 2, 2015, for \$1,300.00 in unpaid rent due on May 1, 2015, and unpaid utilities in the amount of \$92.40 due on April 10, 2015, with a stated effective vacancy date of May 12, 2015;
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of posting it to the door of the rental unit at 11:30 am on May 2, 2015. The Proof of Service form establishes that the service was witnessed by "ML" and a signature for ML 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 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 provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on May 5, 2015, three days after its posting.

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.

Subsection 46(6) of the *Act*, reads in part as follows:

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.

The tenancy agreement included as part of this application includes a term which establishes that the tenant is responsible for 70% of the hydro bill and metered utilities such as water and sewage. The landlord provided a copy of a letter dated April 10, 2015, in which the tenant is alerted to the sum of the unpaid utilities owed and is advised that she is responsible for the payment of the sum of the unpaid utilities by May 10, 2015. 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 May 2, 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 to the tenant on a date earlier than permitted under the *Act*.

Therefore, as the landlord has not followed the requirements under section 46(6) of the *Act*, it is not open for the landlord to treat the unpaid utilities as unpaid rent and seek reimbursement by way of a monetary Order via the Direct Request process. I dismiss that portion of the landlord's application for a monetary Order that deals with unpaid utilities with leave to reapply. I limit my consideration of the landlord's request for a monetary Order to the unpaid rent claimed as owing to the landlord.

I accept the evidence before me that, on a balance of probabilities, the tenant has failed to pay, in full, the monthly rent owed for the month of May 2015. I find that the tenant received the Notice on May 5, 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 corrected effective date of the Notice, May 5, 2015. Therefore, I find that the landlord is entitled to an Order of Possession based on the May 2, 2015 Notice served to the tenant for unpaid rent.

I turn now to the landlord's application for a monetary Order arising from unpaid rent in the amount of \$1,300.00. The tenancy agreement provided by the landlord establishes that the monthly rent was set at \$1,100.00. However the documentary evidence provided by the landlord, such as the monetary order worksheet and the Notice served to the tenant, establishes that the rent owed for the month of May 2015 was \$1,300.00, which brings into question whether the monthly rent was raised from \$1,100.00 to \$1,300.00 during the course of the tenancy. However, the landlord has not demonstrated the manner in which the rent was increased, as the landlord has not included any copies of "Notice of Rent Increase" forms. I

cannot infer that the rent was increased by way of a mutual agreement between the parties. I further find that the landlord has not provided any clarification as to why there is a discrepancy with respect to the different amounts indicated for the monthly rent amount.

While I find that, on a balance of probabilities, the tenant is in rental arrears with respect to outstanding rent owed for the month of May 2015, due to the irregularities and inconsistency with respect to the manner in which the monthly rent is identified, I find I am unable to determine, within the limited scope of the Direct Request process, the correct and current amount of monthly rent owed under the tenancy, and by extension, am unable to determine the correct amount of rent owed by the tenant. Therefore, I dismiss the landlord's application for a monetary Order with leave to reapply.

### 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.

I dismiss the landlords' application for a monetary Order 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: May 19, 2015

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Residential Tenancy Branch

