



# 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 June 25, 2015, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. 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 June 30, 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 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 tenants;

- A copy of a residential tenancy agreement which was signed by two landlords and two tenants, including the tenant identified as the Respondent in this application on July 31, 2013, indicating a monthly rent of \$650.00, due on the last day of the month for a tenancy commencing on July 31, 2013;
- A Monetary Order Worksheet showing the rent and utilities owing and paid during the period from April 1, 2015 to June 25, 2015 for this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the 10 Day Notice) dated June 19, 2015, and handed personally to the tenant on June 19, 2015, with a stated effective vacancy date of June 29, 2015, for \$950.00 in unpaid rent (i.e., \$300.00 from May 2015, and \$650.00 from June 2015), and \$180.00 in unpaid utilities (i.e., \$60.00 for each of April, May and June 2015).

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was handed personally to the tenant at 6:15 pm on June 19, 2015. The 10 Day Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

### Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the 10 Day Notice on June 19, 2015.

I find that the tenant was obligated to pay the monthly rent in the amount of \$650.00, as per the tenancy agreement.

I find that the tenant was obligated to pay 1/3 of the utilities including gas and hydro, as per the tenancy agreement. Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. As I find that there is no written demand in the landlord's evidence submissions which would allow the landlord to treat the utilities as unpaid rent, I dismiss the landlord's application for a monetary award for unpaid utilities with leave to reapply. I do so as the landlord has not demonstrated entitlement to a monetary award for this item at this time. The landlord has not provided evidence to show that the tenant has failed to pay the utilities within 30 days of receiving a written request for the payment of these utilities.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46(4) of the *Act* and did not dispute the 10 Day 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 10 Day Notice, June 29, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order in the amount of \$950.00, the amount claimed by the landlord, for unpaid rent owing for May and June 2015 as of June 25, 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 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 \$950.00 for rent owed for May and June 2015. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the landlord's application for a monetary award for unpaid utilities 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: June 30, 2015

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Residential Tenancy Branch

