



# 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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on July 9, 2015, the landlord served each of the above-named tenants with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenants acknowledged receipt of the Notice of Direct Request Proceeding by providing their respective signatures on the Proof of Service forms.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on July 9, 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:

- Two copies 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 the landlord and the tenants on November 2, 2012, indicating a monthly rent of \$1,100.00 due on the first day of the month for a tenancy commencing on November 3, 2012. The tenancy agreement includes an addendum item which demonstrates that the tenants are responsible for payment of one-third of the amount of the electricity and gas charges;
- A written demand dated April 8, 2015, addressed to the tenants, in which the landlord asks that the tenants pay their portion of the amount due for two gas bills in the amounts of \$58.57 and \$44.41, and to pay their portion of the amount due for a hydro bill in the amount of \$124.03. The landlord also asks the tenants to pay a portion of a cable bill in the amount of \$14.97. The tenants are directed to pay a sum of \$241.98 for utilities owed;
- Copies of a hydro bill, gas bill, and cable bill referred to in the landlord's written demand dated April 8, 2015.
- 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 \$1,341.98, comprised of outstanding rent owing in the amount of \$1,100.00 for July 2015 and outstanding utilities owing in the amount of \$241.98;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the Notice) dated July 2, 2015, which the landlord states was served to the tenants on July 2, 2015, for \$241.94 in unpaid utilities due on April 8, 2015 and for \$1,100.00 unpaid rent due on July 1, 2015, with a stated effective vacancy date of July 12, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of personal service via hand-delivery to the tenant "DF" at 9:30 AM on July 2, 2015. The personal service was confirmed as the tenant acknowledged receipt of the Notice by signing the Proof of Service form.

The Notice restates section 46(4) of the Act which provides that the tenants 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 tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants 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 tenants were duly served with the Notice on July 2, 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 tenants are responsible for payment of one-third of the amount of the electricity and gas utility charges. The landlord provided a written demand to the tenants on April 8, 2015 for payment of outstanding utilities and, consequently, after a period of 30 days had elapsed, was able to treat the unpaid utilities as unpaid rent in accordance with subsection 46(6) of the *Act*.

The sum of the gas and hydro charges, as calculated by the landlord on the April 8, 2015 demand notice, result in a balance of \$227.01 owed by the tenants for gas and hydro. The landlord also includes an amount of \$14.97 claimed as owed by the tenants for their portion of a cable bill. However, I find that the tenancy agreement signed by the parties does not include any term to demonstrate that the tenants were liable to pay a portion of the cable bill. I further find that there is no evidentiary material before to demonstrate that the parties entered into an agreement whereby the tenants were to pay a portion of the cable bill.

Furthermore, on the second page of the tenancy agreement, a box has been checked to demonstrate that service for cablevision was included as part of the rent. Therefore, I find that it is not open for the landlord to recover the cost of cable, in the amount of \$14.97, by way of the Direct Request process by treating it as unpaid rent. I dismiss the portion of the landlord's monetary claim with respect to charges owed for cable with leave to reapply. If the landlord is able to demonstrate that the parties subsequently entered into an agreement whereby the tenants were to pay a portion of the cable bill, the landlord may seek to recover such costs by way of a separate application for dispute resolution. I will consider the landlord's application for a monetary Order based on the portion of the monetary claim arising from unpaid rent, as well as unpaid utilities in the amount of \$227.01 arising from the portion owed by the tenants for the gas and hydro bills.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,100.00, as established in the tenancy agreement, and further find that the tenants were responsible for payment of one-third of the amount of the electricity and gas charges. I accept the evidence before me that the tenants have failed to pay outstanding rental arrears in the amount of \$1,100.00 in rent owing for the month of July 2015 and have failed to pay the

sum of utilities owed in the amount of \$227.01. I find that the tenants received the Notice on July 2, 2015. I accept the landlord's undisputed evidence and find that the tenants 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 tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice, July 12, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,327.01 for unpaid rent and utilities owing as of July 8, 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 \$1,327.01 for unpaid rent and utilities owing as of July 8, 2015. The landlord is 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: July 13, 2015

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Residential Tenancy Branch

