



# 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 26, 2016, the landlord personally served Tenant D.S. the Notice of Direct Request Proceeding. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89, I find that Tenant D.S. has been duly served with the Direct Request Proceeding documents on April 26, 2016, the day it was personally served to them.

### 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 Tenant D.S.;
- A copy of a residential tenancy agreement and addendum which was signed by the landlord and the tenants on November 09, 2015, indicating a monthly rent of \$900.00, due on the ninth day of the month for a tenancy commencing on November 09, 2015. The addendum also indicates that the tenants are responsible for 30% of the monthly utilities and 30% of BC Hydro to be paid when the bill exceeds \$500.00;

- A copy of a letter showing that the monthly rent was reduced to \$870.00
- A copy of a demand letter from the landlord to the tenant, dated March 10, 2016, requesting payment of utilities in the amount of \$324.00 (30% of \$1,081.06);
- A second copy of a demand letter from the landlord to the tenant, dated April 04, 2016, requesting payment of utilities in the amount of \$729.17 (30% of \$1,081.06 equaling \$324.48; 30% of \$1,026.65 equaling \$308.00; and 30% of \$322.32 equaling \$96.69 );
- A copy of a BC Hydro bill dated January 25, 2016, in the amount of \$1,081.06, a second copy of a BC Hydro bill dated March 24, 2016, in the amount of \$1,026.65 and a copy of a bill for metered water from the City of Surrey dated December 23, 2015, in the amount of \$322.32;
- A Monetary Order Worksheet showing the rent and utilities owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 15, 2016, and posted to the tenants' door on April 15, 2016, with a stated effective vacancy date of April 25, 2016, for \$118.00 in unpaid rent and \$729.17 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenants' door at 5:00 p.m. on April 15, 2016. The 10 Day Notice states that the tenants 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 tenants were deemed served with the 10 Day Notice on April 18, 2016, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$870.00, as per the tenancy agreement and notice of rent reduction, as well as 30% of the utilities and 30% of BC Hydro bills when they exceed \$500.00.

I accept the evidence before me that the tenants have failed to pay the rent and utilities 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 tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, April 28, 2016.

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. I find that the date of the demand letter, dated April 04, 2016, is less than 30 days from the time that the 10 Day Notice was issued to the tenants and that not enough time has passed to allow the landlord to treat the BC Hydro bill dated March 24, 2016 and the water bill dated December 23, 2015 as unpaid rent.

For the above reason, the monetary portion of the landlord's application regarding the BC Hydro bill dated March 24, 2016 and the water bill dated December 23, 2015, is dismissed with leave to reapply.

I further find that the first demand letter, dated March 10, 2016, demanding the payment of 30% of the BC Hydro bill in the amount of \$1,081.06 was given more than 30 days before the 10 Day Notice was issued to the tenants and, in accordance with section 46 (6) that the landlord can treat the BC Hydro utility bill dated January 25, 2016, as unpaid rent

I further find that the landlord has not submitted a Proof of Service of the Notice of Direct Request Proceeding for Tenant C.K., and for this reason, the monetary portion of the landlord's application naming Tenant C.K. as a respondent is dismissed, with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order against Tenant D.S. in the amount of \$442.00, for unpaid rent owing for April 2016 and unpaid utilities owing as of April 9, 2016 (30 days from the date the March 10, 2016 demand letter was issued to the tenants for the BC Hydro bill dated January 25, 2016) as of April 25, 2016.

### 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 \$442.00 for rent and utilities owed for April 2016. The landlord is provided with this Order in the above terms and Tenant D.S. must be served with **this Order** as soon as possible. Should Tenant D.S. 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 monetary portion of the landlord's application naming Tenant C.K. as a respondent, with leave to reapply.

I dismiss the the monetary portion of the landlord's application regarding the BC Hydro bill dated March 24, 2016 and the water bill dated December 23, 2015, 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: April 28, 2016

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Residential Tenancy Branch