



# 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 May 24, 2016, at 6:05 PM, the landlord served the tenant with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service form also establishes that the service was witnessed by “DS” and a signature for “DS” is included on the 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 May 24, 2016.

### 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 and the tenant on November 23, 2014, indicating a monthly rent of \$1,195.00 due on the first day of the month for a tenancy commencing on December 01, 2014;
- A Monetary Order Worksheet showing the unpaid rent and utilities owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$2,540.00, comprised of the balance of unpaid

rent and utilities owed. The landlord indicates that there is unpaid rent owed in the amount of \$1,195.00 for each of April 2016 and May 2016, which results in a balance of \$2,390.00 owed for unpaid rent. The landlord also indicates that there is a balance of \$150.00 owing for unpaid utilities for April 2016 and May 2016;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the Notice) dated May 05, 2016, which the landlord states was served to the tenant on May 05, 2016, for \$2,540.00 in unpaid rent due on May 01, 2016, with a stated effective vacancy date of May 15, 2016;
- A copy of a letter, dated May 24, 2016, in which the landlord attests that the Notice was served to the tenant's roommate "AP" on May 05, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant on May 05, 2016, by way of leaving the Notice with an adult who apparently lives with the tenant. The landlord indicates that the Notice was left with an individual identified as "AP" who the landlord indicates resides with the tenant. The service of the Notice was confirmed as the individual identified as "AP" acknowledged receipt of the Notice by signing the Proof of Service form, and acknowledged being an adult who resides with the tenant;

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 May 05, 2016.

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.

As part of the application for a monetary Order, the landlord indicates on the monetary order worksheet that an amount of \$150.00 is sought for unpaid charges arising from the amount the landlord claims is owed by the tenant for her portion of utility services, which are described in the tenancy agreement as gas and hydro services. Section 46(6) of the Act provides the following with respect to non-payment of utilities under a tenancy agreement:

46(6) 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.

“Policy Guideline #39 Direct Requests” provides the guidelines which govern the Direct Request process. The guideline provides that the onus is on the landlord to ensure that they have included all required documents necessary for an application for dispute resolution via the Direct Request process. Policy Guideline #39 establishes that the landlord must provide, when making an application for dispute resolution for a monetary Order for unpaid rent arising from unpaid utilities, copies of the demand letter which includes copies of the utility bills. I find that the application before me does not include a copy of a demand letter served to the tenant with respect to unpaid utility charges claimed as being owed by the tenant.

Although the tenancy agreement does stipulate that the tenant is required to pay an additional fee for a portion of the utilities provided with respect to the rental unit, the landlord has not provided any documentary evidence to establish that the provisions of section 46(6) of the *Act*, or the requirements under “Policy Guideline #39 Direct Requests”, were adhered to, as the landlord has not provided a copy of a written demand served to the tenant to direct her to pay the outstanding amount owed for the portion of the utilities she is expected to pay as established in the tenancy agreement.

Based on the foregoing, I find that as the landlord has not followed the requirements under section 46(6) of the *Act*, and the requirements under “Policy Guideline #39 Direct Requests”, 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 an Order of Possession and a monetary Order to the unpaid rent claimed as owing to the landlord.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,195.00, 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 \$2,390.00, comprised of the balance of unpaid rent owed for the months of April 2016 and May 2016. I find that the tenant received the Notice on May 05, 2016. I accept the landlord's undisputed evidence and find that the tenant did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that five-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, May 15, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$2,390.00, comprised of the balance of unpaid rent owed for the months of April 2016 and May 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 \$2,390.00 for unpaid rent. 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.

I dismiss that portion of the landlord's application for a monetary Order that arises from 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: May 25, 2016

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Residential Tenancy Branch