



# 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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on April 21, 2016, at 7:00 PM, the landlord “SS” served the tenants “AM” and “BG” with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service form establishes that the service was witnessed by “RK” and a signature for “RK” is included on the form. The personal service was confirmed as the tenants “AM” and “BG” acknowledged receipt of the Notice of Direct Request Proceeding documents by providing their respective signatures on the Proof of Service forms.

Based on the written submissions of the landlords, and in accordance with section 89 of the *Act*, I find that the tenants “AM” and “BG” have been duly served with the Direct Request Proceeding documents on April 21, 2016.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 22, 2016, the landlord “SS” served the respondent “CM” 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 five days after service.

Based on the written submissions of the landlords, and in accordance with sections 89 and 90 of the *Act*, I find that the respondent “CM” has been deemed served with the Direct Request Proceeding documents on April 27, 2016, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlords submitted the following evidentiary material:

- Three 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 landlords and the tenants “AM” and “BG” on October 30, 2015, indicating a monthly rent of \$1,050.00 due on the first day of the month for a tenancy commencing on November 01, 2015. The landlords provided a copy of an undated addendum which demonstrates that the parties agreed that the tenant “AM” would have her daughter, “CM”, reside with the tenants, and that the monthly rent amount would be increased by \$250.00;
- A document titled “Flat/house – sharing agreement”, dated March 30, 2016, which depicts that a sublet agreement was agreed to by the landlord “SS” and the tenants “AM” and “BG”, to have the respondent “CM” enter into a sublet agreement with the tenants “AM” and “BG”;
- A letter, dated January 26, 2016, from the landlord “SS”, addressed to the tenant “AM”;
- A copy of a rental ledger which establishes the payments received from the tenant “AM”, and outstanding balance with respect to the tenancy;
- A copy of a ledger which establishes the payments received and outstanding balance regarding utility payments with respect to the tenancy;
- Copies of hydro bills and gas bills;
- A copy of a bank statement;

- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlords establish a monetary claim in the amount of \$5,606.00 for unpaid rent and unpaid utilities. The landlords indicate that there is unpaid rent owed in the amount of \$4,850.00, comprised of the balance of unpaid rent owed for the period of October 30, 2015 to April 01, 2016. The landlords indicate that an amount of \$756.10 is owed by the tenants for unpaid utility charges for the period of November 30, 2015 to March 31, 2016;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated April 11, 2016, which the landlords state was served to the tenants on April 11, 2016 for \$4,850.00 in unpaid rent due on April 01, 2016, with a stated effective vacancy date of April 22, 2016. The Notice also depicts that an amount of \$756.10 was due by April 01, 2016 for unpaid utility charges;
- A copy of the Proof of Service of the Notice showing that the landlord “SS” served the Notice to the tenants by way of personal service via hand-delivery to the tenant “AM” on April 11, 2016. The personal service was confirmed as the tenant “AM” acknowledged receipt of the Notice by signing the Proof of Service form. The Proof of Service form establishes that the service was witnessed by “RK” and a signature for “RK” is included on the 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 landlords 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 April 11, 2016.

Although a third individual, identified as “CM”, is listed as a respondent tenant on the application for dispute resolution, neither the name nor signature for “CM” appears on the tenancy agreement to demonstrate that “CM” endorsed the terms of the tenancy agreement as a tenant and entered into a tenancy agreement with the landlords. The addendum provided by the landlord establishes only that the landlords and tenants “AM” and “BG” agreed that “CM” would reside with the tenants. The addendum does not demonstrate that “CM” was added as a tenant to the tenancy agreement and does not demonstrate that “CM” endorsed the terms of the tenancy agreement. Therefore, I will consider the landlords’ application against the tenants “AM” and “BG” only.

As part of the application for a monetary Order, the landlords indicated on the monetary order worksheet that they seek an amount \$756.10 for unpaid utility charges owed by the tenants. 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.

Although the addendum to the tenancy agreement does stipulate that the tenants are required to pay a portion of the utilities with respect to the rental unit, the landlords have not provided any documentary evidence to establish that the provisions of section 46(6) of the *Act* were adhered to. The landlords have not provided a copy of a written demand served to the tenants to direct them to pay the outstanding amount owed for the portion of the utilities they are expected to pay under the agreement. I find that as the landlords have not followed the requirements under section 46(6) of the *Act*, it is not open for the landlords 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 landlords' application for a monetary Order that deals with unpaid utilities with leave to reapply. I limit my consideration of the landlords' request for a monetary Order to the unpaid rent claimed as owing to the landlords.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,050.00, as established in the tenancy agreement. The addendum to the tenancy agreement indicated that the tenants would pay an additional \$250.00 per month after the third occupant was permitted to reside with the tenants. I accept the evidence before me that the tenants have failed to pay outstanding rental arrears in the amount of \$4,850.00, comprised of the balance of unpaid rent owed for the period of October 30, 2015 to April 01, 2016. I find that the tenants received the Notice on April 11, 2016. I accept the landlords' undisputed evidence and find that the tenants 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 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, April 22, 2016.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary Order of \$4,850.00, comprised of the balance of unpaid rent owed for the period of October 30, 2015 to April 01, 2016.

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 \$4,850.00 for unpaid rent. The landlords are 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.

I dismiss the landlords' application for a monetary Order 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: May 03, 2016

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Residential Tenancy Branch