



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 888 FAIRVIEW LTD C/O GATEWAY PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **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 utilities and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 6, 2017, 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 February 11, 2017, 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 tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on October 21, 2015, indicating a monthly rent of \$680.00, due on the first day of the month for a tenancy commencing on November 1, 2015;

- Twelve copies of utility bills from the City of Penticton for the rental unit for the period of November 2015 to October 2016, totaling \$1,522.88;
- Seven copies of utility bills from the City of Penticton for a rental unit that is not the unit indicated in the agreement, for the period of April 2016 to October 2016, totaling \$519.70;
- A copy of a demand letter from the landlord to the tenant, dated November 23, 2016, requesting payment of utilities in the amount of \$1,800.41;
- A Monetary Order Worksheet and ledger showing the utilities owing and paid during the relevant portion this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 19, 2017, and sent to the tenant by registered mail on January 19, 2017, with a stated effective vacancy date of February 5, 2017, for \$1,800.41 in unpaid utilities.

Documentary evidence filed by the landlord indicates that the 10 Day Notice was sent to the tenant by registered mail at 4:36 pm on January 19, 2017. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. The 10 Day Notice states that the tenant had five days from the date of service to pay the utilities 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 deemed served with the 10 Day Notice on January 24, 2017, five days after its registered mailing.

I find that the tenant was obligated to pay the electricity bills, as per the tenancy agreement.

I accept the evidence before me that the tenant has failed to pay the 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 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, February 5, 2017.

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 that such evidentiary material 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.

I note that the amount of utilities indicated in the 10 Day Notice and the demand letter does not match the total utilities as indicated in the utility bills provided. I also note that the landlord has included utility bills for a unit that is not the rental unit as established in the tenancy agreement.

For these reasons, the monetary portion of the landlord's claim is dismissed with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid utilities owing as of February 6, 2017.

### 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.

I dismiss the landlord's application for a Monetary Order 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: February 14, 2017

---

Residential Tenancy Branch