



# 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 March 02, 2017, the landlord personally served Tenant J.C. the Notice of Direct Request Proceeding. The landlord had Tenant J.C. and 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 of the *Act*, I find that Tenant J.C. has been duly served with the Direct Request Proceeding documents on March 02, 2017, the day it was personally served to them.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 01, 2017, the landlord sent Tenant Y.C. 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 Tenant Y.C. has been deemed served with the Direct Request Proceeding documents on March 06, 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:

- Two copies of the Proof of Service of the Notices 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 January 03, 2016, indicating a monthly rent in the amount of \$1,515.00, due on the 15th day of the month for a tenancy commencing on October 15, 2015;
- A copy of a Notice of Rent Increase form which is of poor quality and illegible;
- A copy of a demand letter, from the landlord to the tenant, dated January 05, 2017, requesting payment of utilities in the amount of \$53.00 for past due amounts owed for 2016 and \$125.00 for the Jan-Feb 2017 utilities;
- Two copies of utility bills, one from BC Hydro, dated October 21, 2016, for \$1,764.00, and one from Fortis BC, dated October 02, 2016 for \$825.00 totaling \$2,589.00;
- A Monetary Order Worksheet showing the rent 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 February 17, 2017, and personally handed to the tenants on February 17, 2017, with a stated effective vacancy date of February 27, 2017, for \$3,116.00 in unpaid rent and \$178.00 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally handed to the tenants at 2:40 p.m. on February 17, 2017. 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 section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on February 17, 2017.

As the Direct Request process is an ex parte proceeding that does not allow for any clarification of the facts, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. The onus is on the landlord to present evidentiary material that does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding.

I find that the Notice of Rent Increase form is illegible and I am not able to confirm the amount of the rent increase given to the tenants. For this reason, I find that the tenants were obligated to pay the monthly rent in the amount of \$1,515.00, as per the tenancy agreement.

I accept the evidence before me that the tenants have failed to pay the rent 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 effective date of the 10 Day Notice, February 27, 2017.

I find that the demand letter is requesting payment of utilities, in the amount of \$125.00, that was not due at the time the demand letter was issued to the tenants in 2017 and of which there is no copy of a bill provided to substantiate the utility payment. For this reason the monetary portion of the landlord's application, concerning the payment of utilities owed for 2017, is dismissed with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order in the amount of \$3,083.00, for unpaid rent owing for January 2017, February 2017 and 2016 utilities, as of February 28, 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(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 \$3,083.00 for rent owed for January 2017, February 2017 and 2016 utilities. The landlord is provided with this Order in the above terms and the tenants must be served with **this Order** as soon as possible. Should the tenants 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, concerning unpaid utilities for 2017, 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: March 08, 2017

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Residential Tenancy Branch