



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR OPR

### Introduction

This participatory hearing was convened after the issuance of a May 29, 2017 Interim Decision of an Adjudicator. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord's application for the following to a participatory hearing:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities; and
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent.

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter.

The landlord, P.S.G. attended the hearing, while the tenant did not. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Utilities ("10 Day Notice") was posted on the door of the tenant's unit on May 16, 2017. Pursuant to sections 88 and 90 of the *Act*, I find that the tenant was served with this 10 Day Notice on May 19, 2017.

On June 8, 2017, the tenant was sent a Notice of Hearing by way of Canada Post Registered Mail. The landlord provided a copy of the Canada Post tracking number to the hearing. The landlord confirmed that the Canada Post website displayed the package as being delivered on June 12, 2017. Pursuant to sections 88 and 90 of the

*Act*, the tenant is found to have been served on June 13, 2017 with the Notice of Hearing.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order for unpaid rent?

### Background and Evidence

The tenancy in question began on February 1, 2017. This was a month to month tenancy with rent set at \$1,000.00 per month. A security deposit of \$500.00 continues to be held by the landlord.

The landlord gave testimony that his application for Direct Request was reconvened to a participatory hearing because an Adjudicator determined that, “the landlord must prove that they served the tenant with the demand letter and a copy of the utility bill in accordance with section 88 of the *Act*. E-mail is not a recognized method of service under the *Act*.”

The landlord explained that he now understood that he could not email the demand letter or a copy of the utility bill to the tenant. He said he posted a copy of the demand letter, along with copies of the outstanding utility bills on the tenant’s rental unit door, on June 8, 2017. Pursuant to sections 88 & 90 of the *Act*, the tenant is deemed to have been served with these documents on June 11, 2017.

The landlord has applied for an Order of Possession and a Monetary Order of \$345.00 reflecting unpaid utilities for the months of February and March. The landlord testified that the tenant continue to occupy the rental unit and that the utility bill remains unpaid.

### Analysis

Undisputed testimony was presented at the hearing that utilities remain unpaid more than 30 days after the tenant was given a written demand for payment on June 8, 2017. Section 46(5) of the *Act* notes that, “If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit

to which the notice relates by that date.” Section 46(6) continues by explaining that, “If a tenancy agreement requires the tenant to pay utility charges to the landlord, and 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.”

Section 52 of the *Act* explains that;

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
- (e) when given by a landlord, be in the approved form.

A landlord can only issue a 10 Day Notice for Unpaid Utilities 30 days after the tenant was given a written demand to pay the arrears for unpaid utilities. In this case, I find that the tenant was served with the 10 Day Notice on the corrected effective date of May 19, 2017. This date is before to the service of the demand letter posted on the tenant's door on June 8, 2017, with an effective service date of June 11, 2017. The landlord has therefore failed to serve the tenant with a 10 Day Notice 30 days after the tenant was given a written demand to pay the arrears for unpaid utilities. The landlord's application for an Order of Possession is dismissed with leave to re-apply.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove his entitlement to his claim for a monetary award.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a Monetary Order of \$345.00 for unpaid utilities. The landlord provided undisputed testimony that utilities

have not been paid for February and March 2017. The landlord demonstrated through his undisputed testimony that the tenant was served with a written demand letter on June 11, 2017. This amount remains unpaid and the landlord will be issued a Monetary Order to reflect these unpaid utilities.

### Conclusion

The landlord's application for an Order of Possession is dismissed with leave to reapply.

I make a Monetary Order of \$345.00 in favour of the landlord as follows:

Item	Amount
Unpaid Utilities for February 2 to March 3, 2017	\$345.00
<b>Total Monetary Order</b>	<b>\$345.00</b>

The landlord is provided with a formal Order in the above terms. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.

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: July 21, 2017

---

Residential Tenancy Branch