



# 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 Proofs of Service of the Notices of Direct Request Proceeding which declare that on August 10, 2017, the landlords sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on August 15, 2017, 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:

- A copy of a residential tenancy agreement which was signed by the landlord and Tenant J.C. on February 23, 2017, indicating a monthly rent of \$1,750.00, due on the first day of each month for a tenancy commencing on March 1, 2017;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy;
- Two copies of utility bills from Fortis for the rental unit dated July 11, 2017 for \$53.14 and June 7, 2017 for \$72.43, totaling \$125.57;
- Two copies of utility bills from BC Hydro for the rental unit dated May 12, 2017 for \$361.82 and July 13, 2017 for \$278.49, totaling \$640.31;
- A copy of a demand letter from the landlords to the tenants requesting payment of utilities in the amount of \$459.52 by July 24, 2017; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 14, 2017, with a stated effective vacancy date of July 24, 2017, for \$1,750.00 in unpaid rent and \$260.55 in unpaid utilities.

Witnessed documentary evidence filed by the landlords indicates that the 10 Day Notice was personally served to Tenant J.C. at 3:10 pm on July 14, 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 July 14, 2017.

I note that the address indicated on the 10 Day Notice from which the tenants must move is slightly different than the tenants address on the 10 Day Notice where documents are served, the tenancy agreement, the Application for Dispute Resolution and all other documents submitted with the landlords' application. I have amended this

address to match all other information provided for the address as per Section 68(1) of the *Act* as it is reasonable to do so under the circumstances.

Paragraph 12 (1) (b) of the Residential Tenancy Regulations establishes that a tenancy agreement is required to “be signed and dated by both the landlord and the tenant.”

I find that the residential tenancy agreement submitted by the landlords is not signed by Tenant Y.C., which is a requirement of the direct request process, and that a participatory hearing is necessary in order to protect the procedural rights of Tenant Y.C.

However, I find that Tenant J.C. was obligated to pay the monthly rent in the amount of \$1,750.00, as per the tenancy agreement.

I accept the evidence before me that Tenant J.C. has 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 Tenant J.C. 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, July 24, 2017.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. I find that there is no date on the written demand letter in the landlords' evidence submissions to indicate when it was issued to the tenants. I further note that the due date for payment of the utilities on the demand letter was for July 24, 2017, after the 10 Day Notice was issued to the tenants.

As I am not able to confirm whether the landlords have provided the 30 days in accordance with Section 46(5) of the *Act*, the monetary portion of the landlords' application concerning unpaid utilities is dismissed, with leave to reapply.

Therefore, I find that the landlords are entitled to an Order of Possession and a Monetary Order in the amount of \$1,750.00, the amount claimed by the landlords, for unpaid rent owing for July 2017 as of July 25, 2017.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on Tenant J.C. Should Tenant J.C. and any other occupant 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 grant the landlords a Monetary Order in the amount of \$1,750.00 for rent owed for July 2017. The landlords are provided with this Order in the above terms and Tenant J.C. must be served with **this Order** as soon as possible. Should Tenant J.C. 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 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: August 16, 2017

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Residential Tenancy Branch