



# 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 two signed Proofs of Service of the Notice of Direct Request Proceeding which declare that on August 18, 2017, the landlord sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that each of the tenants is deemed to have been served with the Direct Request Proceeding documents on August 23, 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 and/or utilities 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 a residential tenancy agreement which was signed by the landlord and the tenants on October 26, 2016, indicating a monthly rent of \$1,150.00, due on the first day of the month for a tenancy commencing on November 15, 2016;

- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy;
- A copy of an email dated July 2, 2017 from the landlord to the tenant C.T. attaching a copy of the hydro bill;
- A copy of the BC Hydro Bill with a billing date of June 28, 2017 in the amount of \$258.23; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 03, 2017 with a stated effective vacancy date of August 16, 2017, for \$1,150.00 in unpaid rent and \$103.50 in unpaid utilities.

Documentary evidence filed by the landlord indicates that the 10 Day Notice was sent by registered mail to the tenants on August 04, 2017. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. The Notice states that the tenants had five days from the date received to pay the rent and 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 tenants were deemed served with the 10 Day Notice on August 09, 2017, the fifth day after its mailing.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,150.00 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 corrected effective date of the 10 Day Notice, August 19, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order for outstanding unpaid **rent** in the amount of \$1,150.00, the amount claimed by the landlord, for unpaid rent owing for August 2017 as of August 17, 2017.

In relation to the landlord's monetary claim for unpaid utilities, Section 46(6) of the *Act* states that if a tenant is required to pay utilities 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.

In the case before me, I find that section 88 of the *Act* sets out the methods by which service of the demand letter may be given. E-mail is not a recognized method of service pursuant to section 88 of the *Act*.

Based on the foregoing, I am not able to confirm service of the demand letter and utility bill to the tenants, which is a requirement of the Direct Request proceeding, or that the landlord is able to consider unpaid utilities as rent. Accordingly, I dismiss the portion of the landlord's monetary claim relating to unpaid utilities with leave to re-apply, through a participatory hearing process.

### Conclusion

I grant an Order of Possession to the landlord 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 grant the landlord a monetary Order in the amount of \$1,150.00 for **rent** owed for August 2017. The landlord is provided with this Order 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 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 portion of the landlord's monetary claim relating to unpaid utilities with leave to re-apply through a participatory hearing process.

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 24, 2017

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Residential Tenancy Branch