



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PRUDENTIAL POWER PLAY REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") requesting an Order of Possession for unpaid rent and utilities. The Landlord also applied for a Monetary Order for: unpaid rent and utilities; to keep the Tenant's security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"); and to recover the filing fee from the Tenant.

The Application was amended on September 11, 2017 to change the name of the previous Landlord to the current Landlord as well as to increase the monetary claim.

### Preliminary Issues

During the hearing, the agent for the previous property management company, who had filed the Application (the "previous Landlord"), appeared for the hearing and provided affirmed testimony. An agent for the current property management company (the "current Landlord") also appeared and provided affirmed testimony.

However, there was no appearance by the Tenant for the 28 minute hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to service of documents to the Tenant for this hearing.

The previous Landlord who had filed the Application testified that the Application and the Notice of Hearing documents were served to the Tenant by registered mail. The previous Landlord did not have the Canada Post evidence with him but testified that he had text message conversation with the Tenant in which the Tenant acknowledged receipt of the documents for this hearing.

The current Landlord testified that he amended the Application because the property management company had changed since the Application had been filed. The current Landlord testified that he served the Tenant personally with the amended Application on September 10, 2017 and that the Tenant had also acknowledged receipt of the amended Application by text message.

Based on the undisputed evidence before me, I was satisfied that the Tenant was aware of this hearing and that the Tenant had been served with documents pursuant to Section 89(1) of the Act.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent and utilities?
- Is the Landlord entitled to a Monetary Order for the unpaid rent and utilities?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim?

#### Background and Evidence

The current Landlord confirmed that this tenancy started on February 1, 2014 for a fixed term of one year which then continued on a month to month basis thereafter. Rent under the signed tenancy agreement is \$1,250.00 due on the first day of each month. The Tenant paid a security deposit of \$625.00 at the start of the tenancy which the Landlord still holds in trust.

The previous Landlord testified that the Tenant was responsible for paying utilities in this tenancy which the current Landlord clarified was for a fixed amount of \$120.00 per month.

The previous Landlord testified that the Tenant failed to pay rent for June 2017 and by that time, the Tenant was in utility arrears of \$300.00. The previous Landlord testified that in the months that the Tenant had failed to pay utilities, the Tenant was issued with a written breach letter demanding payment, in particular for the last two failed utility payments.

As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated June 3, 2017. The previous Landlord testified that the 10 Day Notice was attached to the Tenant's door on the same

day. The 10 Day Notice was provided into evidence and shows \$1,250.00 in unpaid rent and \$300.00 in unpaid utilities with a vacancy date of June 11, 2017.

The current Landlord testified that pursuant to the accounting documents he had provided into evidence, the Tenant was in rental arrears of \$1,250.00 for June 2017 rent, but there was also an amount of \$75.00 in unpaid rent which was not detailed on the 10 Day Notice. The current Landlord testified that the amount of utility arrears was also incorrect on the 10 Day Notice, and it should have been \$120.00 for the months of January, March, April and June 2017 for a total of \$480.00.

The current Landlord testified that since the 10 Day Notice was served to the Tenant, the Tenant had paid \$1,250.00 within five days of the 10 Day Notice being served to him in June 2017. However, the utilities were still outstanding.

The current Landlord testified that for July and August 2017 the Tenant paid full rent but continued to not pay utilities for these two months. The current Landlord then explained that oddly, the Tenant had paid full rent and utilities for September 2017.

The current Landlord seeks an Order of Possession to end the tenancy for unpaid utilities. The current Landlord also seeks a Monetary Order for a total of \$795.00, comprising of six months of unpaid utilities and a balance of \$75.00 for unpaid rent.

### Analysis

Section 26(1) of the Act requires a tenant to pay rent under a tenancy whether or not the landlord complies with the *Residential Tenancy Act* (the "Act"). Section 46(1) of the Act allows a landlord to end a tenancy for unpaid rent. Section 46(6) of the Act provides that if a tenancy agreement requires a 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 a 10 Day Notice.

I accept the undisputed oral evidence of the parties before me that the Tenant was required to pay utilities in the amount of \$120.00 per month in this tenancy. I also accept the undisputed oral evidence that the Tenant was served with a written demand letter requiring the Tenant to pay utilities. I accept the amount detailed on the 10 Day Notice for unpaid utilities remained unpaid 30 days prior to the issuing of the breach letters testified to by the previous Landlord.

I accept the Tenant was served the 10 Day Notice by attaching it to the Tenant's door on June 3, 2017. As a result, using the deeming provisions of Section 90(c) of the Act, I find the Tenant was deemed served with the 10 Day Notice on June 6, 2017. Pursuant to Section 53 of the Act, I now correct the vacancy date on the 10 day Notice to June 16, 2017.

Sections 47(4) and (5) of the Act provides that within five days of a tenant receiving a 10 Day Notice, the tenant must pay the overdue rent or make an Application to cancel it; if the tenant fails to do either, then they are conclusively presumed to have accepted the end of the tenancy and they must vacate the rental unit on the vacancy date of the 10 Day Notice.

While the Tenant had paid the outstanding rent detailed on the 10 Day Notice, there is no evidence before me that the Tenant paid the outstanding utilities in this tenancy or filed an Application to dispute the 10 Day Notice served to him. Therefore, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of the 10 Day Notice. As a result, I grant the Landlord's request for an Order of Possession to end the tenancy.

As the Landlord has accepted rent from the Tenant for September 2017, but the Tenant is still in rental and utility arrears, I find the Order of Possession is to take effect at 1:00 p.m. on September 30, 2017. This order must be served on the Tenant and may then be filed and enforced in the BC Supreme Court as an order of that court if the Tenant fails to vacate the rental unit.

I accept the undisputed oral and accounting evidence from the current Landlord that the Tenant is in rental arrears of \$75.00 for this tenancy and \$720.00 pertaining to 6 months of utility arrears. Therefore, the Landlord is awarded the monetary claim disclosed on the amended Application for \$795.00.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the \$100.00 Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$895.00.

As the Landlord is holding the Tenant's \$625.00 as a security deposits, pursuant to Section 72(2) (b) of the Act, I order the Landlord to retain this amount in partial satisfaction of the claim awarded.

As a result, the Landlord is granted a Monetary Order for the remaining balance of \$270.00. This order must be served on the Tenant and may then be enforced in the

Small Claims Division of the Provincial Court as an order of that court if the Tenant fails to make payment.

Copies of the above orders for service and enforcement are attached to the Landlord's copy of this Decision. The Tenant may also be held liable for any enforcement costs incurred by the Landlord.

### Conclusion

The Tenant has breached the Act by failing to pay rent and utilities in this tenancy. Therefore, the Landlord is granted an Order of Possession effective for the end of September 2017. The Landlord is allowed to keep the Tenant's security deposit and is issued with a Monetary Order for the remaining balance of \$270.00 for the monies owed.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 18, 2017

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Residential Tenancy Branch