



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, FF

### 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 September 29, 2017, the landlord sent the tenant 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 the tenant has been deemed served with the Direct Request Proceeding documents on October 4, 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*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by a landlord who is not the applicant and the tenant on June 30, 2014, indicating a monthly rent of \$500.00 which does not include utilities, due on the first day of each month for a tenancy commencing on July 1, 2014;
- A copy of a State of Title Certificate showing the current owner of the rental property as the landlord who is applying for dispute resolution;
- A copy of a demand letter from the landlord to the tenant, dated July 6, 2017, requesting payment of utilities in the amount of \$325.84;
- A witnessed statement from the landlord which indicates that the demand letter was posted to the tenant's door on July 6, 2017;
- Four copies of utility bills from Fortis BC for the rental unit dated April 10, 2017 for \$263.68, May 2, 2017 for \$112.44, June 1, 2017 for \$91.58, and June 30, 2017 for \$83.87 totaling \$551.57;
- Two copies of utility bills from BC Hydro for the rental unit dated March 8, 2017 for \$296.23 and May 8, 2017 for \$364.22 totaling \$660.45;
- A copy of a utility bill from the City of Surrey for the rental unit dated March 31, 2017 for \$45.63;
- A Monetary Order Worksheet showing the utilities owing and paid during the relevant portion of this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 14, 2017, with a stated effective vacancy date of September 28, 2017, for \$325.84 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 4:00 pm on September 14, 2017. The 10 Day Notice states that the tenant 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 sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on September 17, 2017, three days after its posting.

I find that the tenant was obligated to utilities as per the tenancy agreement.

I accept the evidence before me that the tenant has failed to pay the utilities owed in full within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five day period.

Based on the foregoing, I find that the tenant 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, September 28, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid utilities owing as of September 27, 2017.

I note that, while the tenancy agreement does indicate that utilities are not included in the monthly rent, the agreement does not specify what percentage of the utilities is the tenant's responsibility.

I find that this discrepancy raises questions which prevent me from confirming the precise amount of utilities owed by the tenant. For this reason, the landlord's application for a Monetary Order for unpaid utilities is dismissed with leave to reapply.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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 \$100.00 for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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 landlord's 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: October 05, 2017

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Residential Tenancy Branch