



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PENTICTON & DISTRICT SOCIETY FOR COMMUNITY LIVING  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent or utilities pursuant to section 55;
- a Monetary Order for unpaid utilities pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents. The tenant represented herself with the assistance of counsel.

As both parties were in attendance service of documents was confirmed. The tenant confirmed receipt of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "10 Day Notice"), the landlord's application for dispute resolution and evidentiary materials. The tenant confirmed she had not submitted any evidence of her own. I find that the tenant was duly served with the landlord's materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee for the application from the tenant?

### Background and Evidence

The parties agreed on the following facts. This tenancy began in August, 2016. The monthly rent is \$529.00. The tenant is responsible for paying the electricity utility bills.

The tenant acknowledged that she failed to pay the utility bills and that there was an arrear of \$320.94 as at July 13, 2017 when she was served with the 10 Day Notice. The tenant confirmed that prior to being issued the 10 Day Notice the landlord had informed her of the arrears and provided her with a demand letter dated June 12, 2017 for the utility arrears.

The tenant gave evidence that she has made three payments for a total of \$170.00 against the arrears. The landlord said that they issued a receipt stating that the first two payments were accepted for "use and occupancy" only. The landlord said that they have not yet received the payment of \$20.00 which the tenant said was issued by etransfer on February 10, 2018, three days before the hearing.

The parties agree that the present amount of the arrear, if the \$20.00 payment is not included is \$170.94.

The tenancy agreement submitted into written evidence provides that a security deposit of \$300.00 is payable at the start of the tenancy but the parties did not provide testimony as to whether the landlord currently holds any amount of deposit for this tenancy.

### Analysis

Section 46(6) of the Act provides that when a tenant is required to pay the utility bills in a tenancy agreement and the utility charges are unpaid for more than 30 days after a written demand is made, the landlord may treat the unpaid utility charges as unpaid rent.

In the present case the parties confirmed that the landlord gave the tenant a written demand for the utility arrears of \$320.94 on June 12, 2017. As the utilities were unpaid 30 days after the written demand the landlord was entitled to issue the 10 Day Notice to end this tenancy.

Section 46(4) sets out that within 5 days of receiving a 10 Day Notice the tenant may either pay the full amount owing or dispute the notice by making an application for

dispute resolution. I accept the evidence before me that the tenant failed to pay the full utilities due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenant dispute the 10 Day Notice within that 5 day period. Accordingly, 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.

Tenant's counsel submitted that the relatively small amount of the arrears, the difficult rental market in the province, and the tenant's family circumstances should be considered in reaching a decision. While I have turned my mind to all the documentary evidence and the testimony of the parties, I find that the section 46 of the *Act* allows the landlord to end a tenancy when payment is not made by the date it is due. I find that the information submitted by counsel has no material effect on my findings.

The 10 Day Notice issued by the landlord conforms with the form and content requirement of section 52 of the *Act* as it is dated and signed, identifies the parties, the rental unit and states the grounds for ending this tenancy, the utility arrears. As such I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*.

I accept the evidence of the parties that the utility arrears is \$170.94. I issue a monetary award for unpaid utilities in that amount pursuant to section 67 of the *Act*. If the landlord finds that the tenant has made an e-transfer against this arrears amount recently, the landlord is at liberty to apply the payment against this arrears. If there is a security deposit for this tenancy, the landlord may deduct the amount of the monetary award from the security deposit in satisfaction of the award.

As the landlord was successful in their application the landlord may recover the \$100.00 filing fee for this application from the tenant.

### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$270.94 under the following terms, which allows the landlord to recover unpaid utilities and the filing fee for their application:

Item	Amount
------	--------

Unpaid Utilities	\$170.94
Filing Fees	\$100.00
<b>Total Monetary Order</b>	<b>\$270.94</b>

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: February 13, 2018

---

Residential Tenancy Branch