



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            OPUM-DR, FFL

### 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 unpaid utilities as well as a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 29, 2018, 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 is deemed to have been served with the Direct Request Proceeding documents on June 03, 2018, 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 and/or unpaid utilities 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 for a rental unit which was signed by the landlord and the tenant on October 16, 2017, indicating a monthly rent of \$616.00, due on the first day of each month for a tenancy commencing on October 16, 2017. The tenancy agreement indicates that the costs of electricity and gas usage are the responsibility of the tenant;

- A copy of a residential tenancy agreement for different rental unit that the tenant was transferred to which was signed by the landlord and the tenant on January 19, 2018, indicating a monthly rent of \$983.00, due on the first day of each month for a tenancy commencing on February 01, 2018. The tenancy agreement indicates that the costs of electricity and gas usage are the responsibility of the tenant;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 03, 2018, for \$598.00 in unpaid rent and \$193.82 in unpaid utilities. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent and utilities in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of May 14, 2018;
- A copy of a demand letter from the landlord to the tenant, dated March 16, 2018, and a proof of service form which indicates that the demand letter was posted to the tenant's door on that March 16, 2018, requesting payment of gas utilities for the first rental unit in the amount of \$200.96;
- A copy of a utility bill for the rental unit dated February 08, 2018, for the period of October 16, 2017, to February 02, 2018, in the amount of \$200.96;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 3:37 p.m. on May 03, 2018; and
- A Direct Request Worksheet showing the rent and utilities owing and paid during the relevant portion of this tenancy.

### 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 May 06, 2018, three days after being left in the mail box.

In accordance with section 88 and 90 of the *Act*, I find that the tenant was deemed served with the utilities demand letter on March 19, 2018.

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. As the 10 Day notice is dated May 03, 2018, I find that more than 30 days has passed from the time that the tenant received the demand letter to when the tenant was served with the 10 Day Notice and that the landlord has the right to treat the unpaid utilities as unpaid rent.

I find that the tenant was obligated to pay the monthly rent in the amount of \$983.00, and is responsible for gas utility charges as per the tenancy agreement.

I accept the evidence before me that the tenant has failed to pay the rent and 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 sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, May 16, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$791.82, for unpaid rent owing for May 2018 (\$598.00) and for utilities owing from October 2017 to January 2018 (\$193.82) as of May 18, 2018.

As the landlord was successful in this application, I find that the landlord is also 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 sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$891.82 for unpaid rent owing for May 2018 and unpaid utilities owing from October 2017 to January 2018, as well as 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.

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: June 04, 2018

---

Residential Tenancy Branch