



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPU-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 utilities as well as a Monetary Order for the filing fee for this Application.

The landlord submitted two signed Proofs of Service of the Notice of Direct Request Proceeding which declare that on June 04, 2018, 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 June 09, 2018, the fifth day after their registered mailing.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid utilities pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to sections 67 and 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 the landlord and the tenants on February 02, 2018, indicating a monthly rent of \$2,400.00, due on the first day of each month for a tenancy commencing on February 02, 2018. The tenancy agreement indicates that the tenants are responsible for 50% of the costs for electricity and gas usage;
- A copy of a demand letter from the landlord to the tenants dated March 29, 2018, requesting payment of gas utilities in the amount of \$133.81;

- A copy of a Proof of Service 30 Day Written Demand to Pay Utilities form which indicates that the demand letter was sent by registered mail to the to the tenants' rental unit on March 29, 2018. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.
- A copy of a utility bill for the rental unit dated February 27, 2018, for the period of January 27, 2018 to February 27, 2018, in the amount of \$154.39. The tenants' share is indicated as \$77.19;
- A second copy of a utility bill for the rental unit dated March 26, 2018, for the period of February 27, 2018, to March 26, 2018 in the amount of \$113.24. The tenants' share is indicated as \$56.62;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 22, 2018, for \$133.81 in unpaid utilities. The 10 Day Notice provides that the tenants had five days from the date of service to pay the utilities in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of June 02, 2018;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent by registered mail to the to the tenants' rental unit on May 22, 2018. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing; and
- A Direct Request Worksheet showing utilities owing and paid during the relevant portion of this tenancy.

### Analysis

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. I have reviewed all documentary evidence and in accordance with section 88 and 90 of the *Act*, I find that the tenants were deemed served with the demand letter for the utilities on April 03, 2018, five days after its mailing. As the 10 Day notice is dated May 22, 2018, I find that more than 30 days has passed from the time that the tenant received the demand letter on April 03, 2018, to when the tenants were served with the 10 Day Notice and that the landlord has the right to treat the unpaid utilities as unpaid rent.

In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on May 27, 2018, five days after its mailing. I find that the

tenants were obligated to pay 50% of the gas utility charges as per the tenancy agreement. I accept the evidence before me that the tenants have 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 tenants are 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, June 06, 2018. Therefore, I find that the landlord is entitled to an Order of Possession for unpaid utilities owing for February 2018 and March 2018 as of June 03, 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(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 sections 67 and 72 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(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.

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 11, 2018

---

Residential Tenancy Branch