



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUTTON ADVANTAGE PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **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 rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 4, 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 will be deemed to have been served with the Direct Request Proceeding documents on July 9, 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 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 the landlord and the tenant on April 7, 2015, indicating a monthly rent of \$750.00, due on the first day of each month for a tenancy commencing on May 1, 2015;

- A copy of 14 utility bills from BC Hydro for the rental unit;
- A copy of 19 utility bills from CRD for the rental unit;
- A copy of a demand letter from the landlord to the tenant, dated May 8, 2018, requesting payment of utilities in the amount of \$1,251.82;
- A copy of a Canada Post Customer Receipt and Tracking Report indicating the demand letter was sent to the tenant by registered mail on May 8, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 11, 2018, for \$1,251.82 in unpaid utilities. The 10 Day Notice provides that the tenant 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 21, 2018;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenant by registered mail at 4:56 pm on June 11, 2018;
- A copy of a Canada Post Customer Receipt and Tracking Report indicating the 10 Day Notice was sent to the tenant on June 11, 2018; and
- A Direct Request Worksheet and ledger showing the rent 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 sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the written demand letter to pay utilities on May 13, 2018, five days after it was sent by registered mail.

I find that the tenant had until the end of day on June 12, 2018, to pay the utilities.

I further find that the 10 Day Notice was issued on June 11, 2018, before the last day the tenant had to pay the utilities, and that the landlord did not wait for the full 30 days before issuing the 10 Day Notice.

I find the landlord did not comply with the provisions of section 46 of the *Act*, in regards to the 10 Day Notice issued to the tenant.

For this reason, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice dated June 11, 2018, without leave to reapply.

The 10 Day Notice dated June 11, 2018, is cancelled and of no force or effect.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice dated June 11, 2018, is dismissed, without leave to reapply.

The 10 Day Notice dated June 11, 2018, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

I dismiss the landlord's application to recover the filing fee paid for this application, without 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: July 05, 2018

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Residential Tenancy Branch