



# Dispute Resolution Services

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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 a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on August 10, 2018, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

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 August 15, 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 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 the landlord's agent and the tenant, indicating a monthly rent of \$750.00 due on the first day of each month for a tenancy commencing on May 01, 2015. The tenancy agreement included a term stating that the tenant is to pay 25% of the cost of hydro and water invoices;
- A Direct Request Worksheet, with an attached ledger, showing the rent and utilities owing and paid during the portion of this tenancy in question, on which the landlord indicates that there are unpaid utilities charges owing in the amount of \$1,251.82, which were due on May 01, 2018;
- A written demand for payment of utilities, in the form of a letter from the landlord, dated May 08, 2018, addressed to the tenant, in which the landlord asks that the tenant pay her portion of utilities owed in the amount of \$1,251.82. The landlord included a Canada Post Registered Mail Customer Receipt ticket and tracking history to demonstrate that the letter was served to the tenant by way of registered mail;
- Copies of hydro bills and municipal water bills;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) dated July 18, 2018, which the landlord states was served to the tenant on July 18, 2018, for \$1,251.82 in unpaid utilities owed by May 08, 2018, with a stated effective vacancy date of August 03, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent served the Notice to the tenant by way of registered mail on July 18, 2018. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

The Notice restates section 46(4) of the Act which provides that the tenants had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

## Analysis

I have reviewed all relevant documentary evidence provided by the landlord. Section 90 of the Act provides that because the Notice was served by registered mail, the tenant is deemed to have received the Notice five days after its mailing. In accordance with

sections 88 and 90 of the Act, I find that the tenant is deemed to have received the Notice on July 23, 2018, five days after its registered mailing.

Section 46(6) of the Act, provides, in part, the following:

If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I find that the tenancy agreement included a term which demonstrates that the tenant is required to pay 25% of the amount owed for the hydro and water utilities. The landlord provided a written demand letter to the tenant for payment of the outstanding utility bills, and, consequently, after a period of 30 days had elapsed, was able to treat the unpaid amount owed for utilities as unpaid rent in accordance with subsection 46(6) of the *Act*.

I find that the tenant was obligated to pay monthly rent in the amount of \$750.00, and was required to pay 25% of the amount owed for the hydro and water utilities, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay outstanding charges arising from the amount of unpaid utility payments owed by the tenant, in the amount of \$1,251.82, which was due by May 08, 2018.

I accept the landlord's undisputed evidence and find that the tenants did not pay the utility charges owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the 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 Notice, August 03, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,251.82 for unpaid utility charges owed by May 08, 2018.

As the landlord was 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(s). 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 find that the landlord is entitled to a monetary Order in the amount of \$1,351.82 for unpaid rent and utilities, and for the recovery of the filing fee for this application. The landlord is provided with these Orders 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 these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: September 17, 2018

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Residential Tenancy Branch