



# 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 utilities and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 8, 2019, the landlord sent Tenant G.P. 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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 8, 2019, the landlord personally served Tenant N.S. the Notice of Direct Request Proceeding. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89 of the *Act*, I find that Tenant N.S. has been duly served with the Direct Request Proceeding documents on March 8, 2019.

### 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 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 and the tenants on January 27, 2018, indicating a monthly rent of \$1,600.00, due on the first day of each month for a tenancy commencing on March 1, 2018;
- Three copies of utility bills from BC Hydro for the rental unit dated December 27, 2018, January 25, 2019, and February 26, 2019 for equal payment plan amounts of \$228.00 each month;
- A copy of a utility bill from the District of Saanich for the rental unit dated March 7, 2019 for \$475.59;
- A copy of a demand letter from the landlord to the tenants, dated January 28, 2019, requesting payment of utilities;
- A copy of a witnessed Proof of Service Written Demand to Pay for Utilities form which indicates that the demand letter was posted to a conspicuous place at 3:30 pm on January 28, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated February 27, 2019, for \$519.44 in unpaid utilities. The 10 Day Notice provides that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of March 12, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants' door at 11:00 (a.m. or p.m. not indicated) on February 27, 2019; and
- A Direct Request Worksheet 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, and issue a 10 Day Notice, 30 days after the tenant is given a written demand for them.

In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the demand letter to pay utilities on January 31, 2019, three days after its posting.

I find that the thirtieth day for the tenants to have paid the utilities was March 2, 2019. I further find that the earliest date that the landlord could have treated the unpaid utilities as unpaid rent and issued a 10 Day Notice was March 3, 2019.

I find that the landlord issued the 10 Day Notice on February 27, 2019, less than 30 days from the time that the demand letter was received by the tenants, and that not enough time has passed to allow the landlord to treat the unpaid utilities as unpaid rent.

Therefore, 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 February 27, 2019, without leave to reapply.

The 10 Day Notice of February 27, 2019, is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice, I dismiss the landlord's application for a Monetary Order for unpaid utilities with leave to reapply.

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 February 27, 2019, is dismissed, without leave to reapply.

The 10 Day Notice dated February 27, 2019, 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 for a Monetary Order for unpaid utilities with leave to reapply.

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: March 14, 2019

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Residential Tenancy Branch