



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPU-DR

### 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 March 25, 2019, the landlord posted the Notice of Direct Request Proceeding to the door of the rental unit. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service. Based on the written submission of the landlord and in accordance with sections 89(2) and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on March 28, 2019, the third day after their posting.

### 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*?

### 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 December 3, 2018, indicating a monthly rent of \$1,550.00, due on the first day of each month for a tenancy commencing on December 3, 2018;
- A copy of a utility bill from BC Hydro for the rental unit dated January 29, 2019 for \$188.06;
- A copy of a demand letter from the landlord to the tenant, dated February 6, 2019, requesting payment of utilities in the amount of \$94.03;

- A copy of a witnessed Proof of Service Written Demand to Pay Utilities form which indicates that the demand letter was placed in the tenant's mailbox or mail slot at 11:00 am on February 6, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 13, 2019, for \$94.03 in unpaid utilities. The 10 Day Notice provides that the tenant 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 27, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was placed in the tenant's mailbox or mail slot at 12:00 am on March 13, 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 a landlord to treat unpaid utilities as unpaid rent 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,

I find that the tenancy agreement states that the utilities are the tenant's responsibility, but does not specify that the tenant is to pay the utilities to the landlord.

For this reason, I find that the landlord is not able to treat unpaid utilities as unpaid rent for the purposes of issuing a 10 Day Notice under section 46(6) of the *Act*.

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 March 13, 2019, without leave to reapply.

The 10 Day Notice dated March 13, 2019 is cancelled and of no force or effect.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice dated March 13, 2019, is dismissed, without leave to reapply.

The 10 Day Notice dated March 13, 2019, is cancelled and of no force or effect.

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

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: April 01, 2019

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Residential Tenancy Branch