



# 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 which declares that on July 16, 2019, 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 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 is deemed to have been served with the Direct Request Proceeding documents on July 21, 2019, 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 relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on February 23, 2019, indicating a monthly rent of \$1,100.00, due on the first day of each month for a tenancy commencing on March 1, 2019;
- A copy of a utility bill from the BC Hydro for the rental unit dated March 27, 2019 for \$722.26, on which the landlord has indicated that \$59.20 is to be paid by the tenant;

- A copy of a Canada Post Customer Receipt containing the Tracking Number to confirm the utility bill requesting payment was sent to the tenant on May 11, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated June 22, 2019, for \$59.20 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 July 7, 2019;
- 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 1:08 pm on June 22, 2019;
- A copy of a Canada Post receipt containing the Tracking Number to confirm the 10 Day Notice was sent to the tenant on June 22, 2019; and
- A Direct Request Worksheet showing the utilities owing and paid during the relevant portion of this tenancy.

### Analysis

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 utility bill requesting payment on May 16, 2019, five days after its registered mailing.

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. As the 10 Day Notice is dated June 22, 2019, I find that more than 30 days has passed from the time that the tenant received the demand letter to when the tenant was 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 tenant was deemed served with the 10 Day Notice on June 27, 2019, five days after its registered mailing.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,100.00, and was responsible for 20% of the electricity charges as per the tenancy agreement.

I accept the evidence before me that the tenant has failed to pay 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 tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, July 7, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$59.20, for unpaid utilities owing from March 1, 2019 to March 25, 2019, as of July 16, 2019.

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. Should the tenant 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 \$159.20 for unpaid utilities owing from March 1, 2019 to March 25, 2019 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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: July 22, 2019

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Residential Tenancy Branch