



# 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 September 13, 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 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 is deemed to have been served with the Direct Request Proceeding documents on September 18, 2019, the fifth day after their registered mailing.

### 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 utilities 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 on February 20, 2018, and the tenant on February 19, 2018, indicating a monthly rent of \$2,250.00, due on the second day of each month for a tenancy commencing on March 01, 2018. The tenancy agreement indicates that the water utility is not included in the rent in addition to an addendum signed by both parties which states that the tenant is responsible for all utilities other than what is noted on the tenancy agreement;

- A copy of a demand letter from the landlord to the tenant dated May 30, 2019, requesting payment of metered water and sewage utilities in the amount of \$143.18. A copy of a second demand letter from the landlord to the tenant dated July 27, 2019, requesting payment of metered water and sewage utilities in the amount of \$205.36;
- Two copies of Proof of Service 30 Day Written Demand to Pay Utilities form, for each demand letter, which indicates that the demand letters were left in the mailbox of the tenant's rental unit on May 30, 2019 and July 27, 2019;
- A copy of a utility bill for the rental unit dated April 15, 2019, for the period of January 01, 2019 to March 31, 2019, in the amount of \$143.18. A second copy of a utility bill for the rental unit dated July 12, 2019, for the period of April 01, 2019, to June 30, 2019, in the amount of \$205.36.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated September 02, 2019, for \$348.54 in unpaid utilities. The 10 Day Notice provides that the tenant had five days from the date of service to pay utilities in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of September 15, 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 tenant's door on September 02, 2019; and
- A Direct Request Worksheet showing the utilities owing and paid during the relevant portion of this tenancy. The worksheet indicates that the tenant paid \$77.52 towards the outstanding utilities on September 02, 2019.

### 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 10 Day Notice on September 05, 2019, three days after its posting.

Section 46 (4) of the *Act* states that within five days of a tenant receiving the 10 Day Notice, the tenant may either pay the rent or dispute the 10 Day Notice.

I find that the fifth day for the tenant to have either paid the utilities or disputed the notice was September 10, 2019. I further find that the earliest date that the landlord could have applied for dispute resolution was September 11, 2019.

I find that the landlord applied for dispute resolution on ~~September 09, 2019,~~ **September 13, 2019.** ~~one day before the last day that the tenant had to dispute the 10 Day Notice. For this reason I find that the landlord made their application for dispute resolution too early.~~

~~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 September 02, 2019, with leave to reapply. For the same reasons identified above, I dismiss the landlord's application for a Monetary Order for unpaid rent, 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 and I dismiss this portion of the landlord's claim, without leave to reapply.~~

**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 first utilities demand letter on June 02, 2019, and the second utilities demand letter on July 30, 2019, three days after the demand letters were left in the mailbox.**

**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 September 02, 2019, I find that more than 30 days passed from the time that the tenant received the demand letters, to when the tenant was served with the 10 Day Notice. For the above reason, I find that the landlord has the right to treat the unpaid utilities as unpaid rent.**

**I find that the tenant was obligated to pay the monthly rent in the amount of \$2,250.00, and is responsible for the utility charges as per the tenancy agreement and addendum.**

**I accept the evidence before me that the tenant has failed to pay the 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, September 15, 2019.**

**Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$271.02, for unpaid utilities owing from January 2019 to March 2019 in the amount of \$66.66 and for utilities owing from April 2019 to June 2019 in the amount of \$205.36 as of September 13, 2019.**

**As the landlord was successful in this application, I find that the landlord is also entitled to recover the \$100.00 filing fee paid for this application.**

## **Conclusion**

~~The landlord's application for an Order of Possession and a Monetary Order for unpaid utilities are dismissed with leave to reapply.~~

~~The landlord's application to recover the filing fee is dismissed, without leave to reapply.~~

**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 \$371.02 for unpaid utilities as well as 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: October 03, 2019

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**Residential Tenancy Branch**

DECISION AMENDED PURSUANT TO SECTION 78(1)(A)  
OF THE RESIDENTIAL TENANCY ACT ON OCTOBER 10, 2019,  
AT THE PLACES INDICATED **IN BOLD AND STRIKETHROUGH**.