



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPUM-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 and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 17, 2019, the landlord personally served Tenant A.L. 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(1) of the *Act*, I find that Tenant A.L. has been duly served with the Direct Request Proceeding documents on October 17, 2019.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 17, 2019, the landlord served Tenant S.K. the Notice of Direct Request Proceeding by handing the documents to Tenant A.L. 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 section 89(2) of the *Act*, I find that Tenant S.K. has been duly served with the Direct Request Proceeding documents on October 17, 2019.

### 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*?

### Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord on February 12, 2019 and Tenant A.L. on February 5, 2019, indicating a monthly rent of \$2,450.00, due on the first day of each month for a tenancy commencing on February 1, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 2, 2019, for \$4,900.00 in unpaid rent and \$1,053.31 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 October 12, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was given to an adult who resides with the tenants at 6:25 pm on October 2, 2019;
- A copy of a bank statement showing payments made by Tenant A.L.; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

### Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on October 2, 2019.

Paragraph 12 (1) (b) of the Residential Tenancy Regulation establishes that a tenancy agreement is required to be “signed and dated by both the landlord and the tenant.”

I find that Tenant S.K. has not signed the tenancy agreement, which is a requirement of the direct request process. For this reason, I will only proceed with the portion of the landlord’s application naming Tenant A.L. as a respondent.

I find that Tenant A.L. was obligated to pay the monthly rent in the amount of \$2,450.00, as per the tenancy agreement.

I accept the evidence before me that Tenant A.L. has failed to pay the rent 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 Tenant A.L. 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, October 12, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of the date of this application, October 17, 2019.

Section 46(6) of the Act allows a landlord to treat unpaid utilities as unpaid rent if a tenancy agreement requires the tenant to pay utility charges **to the landlord**, and 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 not included in the rent but does not specify that Tenant A.L. is to pay the utilities to the landlord.

For this reason, the monetary portion of the landlord's application concerning unpaid utilities is dismissed, with leave to reapply.

I find that the monthly breakdown of rent owing on the Direct Request Worksheet is incomplete and does not indicate all months that were included in the \$4,900.00 listed on the 10 Day Notice. I also note that the breakdown of payments listed on the landlord's bank statement do not match either the amount listed on the 10 Day Notice or the Direct Request Worksheet.

I find I am not able to determine the precise amount of rent owing and for this reason, the landlord's application for a Monetary Order for unpaid rent is dismissed, with leave to reapply.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on Tenant A.L. Should Tenant A.L. **and any other occupant** fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlord's application for a Monetary Order for unpaid rent and utilities with 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: October 21, 2019

---

Residential Tenancy Branch