



# 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 form which declares that on February 26, 2020, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on March 02, 2020, 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

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.

On the landlord's Application for Dispute Resolution by Direct Request, the landlord seeks an Order of Possession based on unpaid rent and a Monetary Order for unpaid rent in the amount of \$2,549.95.

The landlord submitted, in part, the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant, indicating a monthly rent of \$2,450.00, due on the first day of each month for a tenancy commencing on November 01, 2019;
- A Direct Request Worksheet showing the rent owing during the relevant portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed in the amount of \$2,450.00, comprised of the balance of unpaid rent due by February 01, 2020. The landlord also indicates that unpaid utility charges in the amount of \$221.95 were owed by January 03, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) dated February 03, 2020, which the landlord states was served to the tenant on February 03, 2020, for \$2,450.00 in unpaid rent due on February 01, 2020, with a stated effective vacancy date of February 20, 2020. The Notice also provides that unpaid utility charges in the amount of \$99.95 were due on January 03, 2020;
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of registered mail on February 03, 2020. The landlord provided a copy of the Canada Post Customer Receipt and transaction receipt containing the Tracking Number to confirm this mailing;
- A written demand for payment of utilities, in the form of a letter from the landlord, dated January 03, 2020, addressed to the tenant, in which the landlord asks that the tenant pay her portion of utility charges owed in the amount of \$221.95; and
- A copy of the Proof of Service of the Written Demand to Pay Utilities, showing that the landlord served the Written Demand to the tenant by way of posting it to the door of the rental unit on January 06, 2020. The Proof of Service form establishes that the service of the demand letter was witnessed and a name and signature for the witness are included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

### Analysis

I have reviewed all relevant documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by registered mail, the tenant is deemed to have received the Notice five days after its mailing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on February 08, 2020, five days after its registered mailing.

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

Subsection 46(6) of the *Act*, reads in part as follows:

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,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The landlord provided a copy of a January 03, 2020 written demand letter sent by the landlord to the tenant, in which the landlord provides the tenant a written demand to provide payment of the outstanding utility charges owed by the tenant in the amount of \$221.95. If a tenant is provided a written demand to provide payment of a utility charge for which she is responsible, the landlord may treat the unpaid utility charges as unpaid rent only if the utility charges remain unpaid more than 30 days after the written demand.

According to the Proof of Service of the Written Demand to Pay Utilities, the landlord served the demand letter to the tenant by way of posting it to the door of the rental unit on January 06, 2020. Section 90 of the *Act* provides that because the demand letter was served by posting it to the door of the rental unit, the tenant is deemed to have received the demand letter three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the demand letter on January 09, 2020, three days after its posting.

As the landlord issued a Notice for unpaid utilities on February 03, 2020, I find that the landlord has not waited more than 30 days from the date of the written demand letter served to the tenant, and has therefore issued the Notice for unpaid utilities to the tenant on a date earlier than permitted under the *Act*.

I therefore find that, with respect to unpaid utilities, the February 03, 2020 Notice was not properly served in accordance with the *Act*, and it was not open to the landlord to treat the unpaid utility charges as unpaid rent as of February 03, 2020, the date on which the Notice was issued to the tenant. I further find that it is not open for the landlord to seek reimbursement of the unpaid utilities by way of a monetary Order via the Direct Request process. I dismiss that portion of the landlord's application for a monetary Order that deals with unpaid utilities with leave to reapply. I limit my consideration of the landlord's request for a monetary Order to the unpaid rent claimed as owing to the landlord.

I find that the tenant was obligated to pay monthly rent in the amount of \$2,450.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay a balance of rental arrears in the amount of \$2,450.00, comprised of the balance of unpaid rent owed by February 01, 2020.

I accept the landlord's undisputed evidence and find that the tenant did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the 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 Notice, February 20, 2020.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$2,450.00 for unpaid rent owed by February 01, 2020, as claimed on the landlord's Application for Dispute Resolution by Direct Request.

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(s) 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 find that the landlord is entitled to a monetary Order in the amount of \$2,550.00 for unpaid rent, and for the recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the landlord's claim for a monetary order arising from unpaid utility charges purportedly owed by the tenant, 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: March 03, 2020

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Residential Tenancy Branch