



# Dispute Resolution Services

Page: 1

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 March 19, 2020, 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 will be deemed to have been served with the Direct Request Proceeding documents on March 24, 2020, 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

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 and the tenant on July 22, 2019, indicating a monthly rent of \$3,200.00, due on the first day of each month for a tenancy commencing on July 23, 2019;
- A copy of an addendum to the tenancy agreement which was signed by the tenant on November 9, 2019, indicating that the tenant is to set up accounts for utilities under the tenant's name;
- A copy of a notice to the property owner from the city of New Westminster dated January 14, 2020 and listing utility arrears in the amount of \$262.87;
- A copy of a demand letter from the landlord to the tenant, dated November 18, 2019, requesting payment of utilities;
- A copy of a Proof of Service Written Demand to Pay for Utilities form which was signed by the tenant and indicates that the demand letter was personally served to the tenant at 6:00 pm on November 18, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 1, 2020, for \$1,200.00 in unpaid rent and \$262.87 in unpaid utilities. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent and utilities in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of February 10, 2020;
- A copy of a Proof of Service Notice to End Tenancy form which was signed by Person J.L. and indicates that the 10 Day Notice was handed to Person J.L., an adult who resides with the tenant, at 1:30 pm on February 1, 2020; and
- A Direct Request Worksheet showing the utilities owing during the relevant portion of this tenancy.

### Analysis

Section 46(6) of the Act allows a landlord to treat unpaid utilities as unpaid rent and issue a 10 Day Notice to End Tenancy 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 not included in the rent but does not specify that the tenant is to pay the utilities to the landlord. Furthermore, the addendum signed on November 9, 2019 specifically requires the tenant to put utilities in their own name.

For this reason, I find the landlord cannot treat the unpaid utilities as unpaid rent and end the tenancy by way of issuing a 10 Day Notice.

Therefore, the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice dated February 1, 2020 is dismissed without leave to reapply.

The 10 Day Notice dated February 1, 2020 is cancelled and of no force or effect.

For the same reason listed above, the landlord's application for a Monetary Order for unpaid utilities is dismissed, 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.

### Conclusion

I dismiss the landlord's application for an Order of Possession for unpaid utilities on the basis of the 10 Day Notice dated February 1, 2020 without leave to reapply.

The 10 Day Notice dated February 1, 2020 is cancelled and of no force or effect.

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

I dismiss the landlord's application for a Monetary Order for unpaid utilities with leave to reapply.

I dismiss the landlord's application to recover the filing fee paid for this application without 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 20, 2020

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Residential Tenancy Branch