



# 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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on September 17, 2020, the landlord served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. 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 tenants have been deemed served with the Direct Request Proceeding documents on September 22, 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 \$4,446.20.

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants, indicating a monthly rent of \$2,000.00 due on the first day of each month for a tenancy commencing on December 01, 2019;
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy in question, on which the landlord establishes that there is a cumulative balance of unpaid rent owed by March 01, 2020 in the amount of \$3,150.00, comprised of the balance of unpaid rent owed for the months encompassing the period of December 2019 to March 2020. The landlord also states that unpaid utility charges, in the amount of \$1,296.24, were due by April 09, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated August 20, 2020, which the landlord states was served to the tenant on August 21, 2020, for \$3,150.00 in unpaid rent due on March 18, 2020, with a stated effective vacancy date of September 05, 2020; and
- A copy of the Proof of Service of the Notice form showing that the landlord served the Notice to the tenants by way of posting it to the door of the rental unit on August 21, 2020. The Proof of Service form establishes that the service of the Notice 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 tenants 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 tenants did not apply to dispute the Notice within

five days from the date of service and the landlord alleged that the tenants 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 posting the Notice to the door of the rental unit, the tenants are deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenants are deemed to have received the Notice on August 24, 2020, three days after its posting.

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.

Policy Guideline 39 – “Direct Requests” provides that the *Act* allows a landlord to treat unpaid utility charges as unpaid rent **if the tenancy agreement requires the tenant to pay utility charges to the landlord** (emphasis added).

Section 46(6) of the *Act* provides the following with respect to non-payment of utilities under a tenancy agreement:

46(6) *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.*

In the application before me, the landlord has attempted to treat unpaid utility charges as unpaid rent.

I find that the evidentiary material provided by the landlord includes a copy of a tenancy agreement which does not demonstrate that the tenants are expected to pay utility charges directly to the landlord. Rather, the tenancy agreement does not state that the tenants are to pay any additional amount for utilities.

The landlord has not provided any documentary evidence to establish that the provisions of section 46(6) of the *Act* were adhered to by demonstrating that the tenancy agreement included a term with respect to the tenants agreeing to provide additional payments to the landlord for utility services.

I find that as the landlord has not followed the requirements under section 46(6) of the *Act*, it is not open for the landlord to treat the unpaid utility charges as unpaid rent and seek reimbursement 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 tenants were obligated to pay monthly rent in the amount of \$2,000.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay the balance of rental arrears due by March 01, 2020, in the amount of \$3,150.00, comprised of the balance of unpaid rent owed for the months comprising the period of December 2019 to March 2020.

I accept the landlord's undisputed evidence and find that the tenants 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 tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice, September 05, 2020.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$3,150.00 for the cumulative balance of unpaid rent owed by March 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(s). 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 \$3,250.00 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(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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 portion of the landlord's application for a monetary claim that deals with unpaid utility charges purportedly owed by the tenants, 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: September 25, 2020

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Residential Tenancy Branch