



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPU-DR, 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 Notice of Direct Request Proceeding forms which declare that on September 24, 2020, the landlord sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the envelopes containing the Canada Post Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants are deemed to have been served with the Direct Request Proceeding documents on September 29, 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.

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on April 14, 2020, indicating a monthly rent of \$2,000.00, due on the first day of each month for a tenancy commencing on May 1, 2020;
- A copy of a demand letter from the landlord to the tenants, dated August 13, 2020, requesting payment of utilities in the amount of \$360.03;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 4, 2020, for \$2,000.00 in unpaid rent and \$360.03 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 September 19, 2020;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenants by registered mail at 2:21 pm on September 4, 2020;
- A copy of an envelope containing the Canada Post Tracking Number to confirm the 10 Day Notice was sent to the tenants on September 4, 2020; and
- A Direct Request Worksheet and ledger showing the rent owing and paid during the relevant portion of this tenancy. The Direct Request Worksheet noted that \$68.81 of the \$2,000.00 identified as owing in the 10 Day Notice was paid on September 11, 2020.

### Analysis

I have reviewed all documentary evidence and I find that the tenants were obligated to pay the monthly rent in the amount of \$2,000.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on September 9, 2020, five days after its registered mailing.

I accept the evidence before me that the tenants have 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 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 10 Day Notice, September 19, 2020.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of the date of this application, September 21, 2020.

Section 46(6) of the *Act* allows a landlord to treat unpaid utilities as unpaid rent 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 written demand letter submitted by the landlord indicates the tenancy agreement required the tenants to put the utilities into their own name. As the tenants were not obligated to pay the utilities directly to the landlord, the monetary portion of the landlord's application concerning unpaid utilities is dismissed, with leave to reapply.

I also find that the monthly breakdown of rent owing on the Direct Request Worksheet does not match with the total monetary amount requested by the landlord. The landlord has indicated that there is a rent balance remaining of \$1,976.19 after the partial payment of \$68.81 was made on September 11, 2020. However, I find that \$2,000.00 minus \$68.81 is \$1,931.19 and not \$1976.19.

For this reason, the landlord's application for a Monetary Order for unpaid rent is dismissed, with leave to reapply.

As the landlord was partially 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 section 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlord is provided with this Order 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 this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 07, 2020

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Residential Tenancy Branch