



# 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 filed by the Landlord for an order of possession and a monetary order based on unpaid rent and utilities, and an order granting recovery of the filing fee.

The Landlord submitted a signed Proof of Service - Notice of Direct Request Proceeding document which declares that the Landlord served the Tenant with the Notice of Direct Request Proceeding and supporting documents by registered mail on February 12, 2021, which service was witnessed by S.M. The Landlord submitted Canada Post receipts and tracking information in support. Based on the written submissions and evidence of the Landlord and in accordance with sections 89 and 90 of the *Act*, I find the Tenant is deemed to have received these documents of February 17, 2021, five days after they were mailed.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. Is the Landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?
3. 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, indicating a monthly rent in the amount of \$1,950.00 due on the first day of each month, for a tenancy commencing on August 1, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 16, 2021 for \$1,950.00 in unpaid rent and \$126.58 in unpaid utilities (the “10 Day Notice”). The 10 Day Notice provides that the Tenant had five days from the date of service to pay the rent and utility charges in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of January 26, 2021;
- A copy of a signed Proof of Service - Notice to End Tenancy form which indicates that the 10 Day Notice was served on the Tenant by attaching a copy to the Tenant’s door or other conspicuous place on January 16, 2021, which service was witnessed by V.M.;
- A copy of a text message from the Landlord to the Tenant dated January 1, 2021 requesting payment of BC Hydro (\$69.47) and Shaw (\$57.11); and
- A copy of a Direct Request Worksheet showing the rent and utilities owing and paid during the relevant period.

### Analysis

I have reviewed all documentary evidence and I find that the Tenant was obligated to pay the monthly rent in the amount of \$1,950.00.

In accordance with sections 88 and 90 of the *Act*, I find that the Tenant is deemed to have received the 10 Day Notice on January 19, 2021, three days after it was attached to the Tenant’s door or other conspicuous place.

I accept the evidence before me that the Tenant failed to pay the rent owed in full within the five days after receipt of the 10 Day Notice 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 Tenant is conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on January 29, 2021, the corrected effective date of the 10 Day Notice.

Therefore, I find the Landlord is entitled to an order of possession which will be effective two days after it is served on the Tenant.

I also find the Landlord has demonstrated an entitlement to a monetary award in the amount of \$1,950.00 for unpaid rent due to January 31, 2021.

With respect to the Landlord's request for unpaid utility charges, section 46(6) of the *Act* states:

*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.*

[Reproduced as written.]

In this case, the written demand was issued on January 1, 2021 by text message. Although the utility charges could not be treated as unpaid rent and included on the 10 Day Notice until February 1, 2021, they were included on the 10 Day Notice issued on January 16, 2021. This inclusion was premature. As a result, I find that the Landlord's request to treat the unpaid utility charges as unpaid rent was premature. This aspect of the Landlord's claim is dismissed with leave to reapply.

As the Landlord is successful, I find they are also entitled to a monetary award in the amount of \$100.00 in recovery of the filing fee paid to make the application.

### Conclusion

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$2,050.00 for unpaid rent and in recovery of the filing fee for this application. The monetary order must be served on the Tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Landlord's request to treat the unpaid utility charges as unpaid rent was premature. This aspect of the Landlord's claim is dismissed 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 1, 2021

---

Residential Tenancy Branch