



Dispute Resolution Services

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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 for unpaid utilities and to recover 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 a Notice of Dispute Resolution Proceeding and supporting documents in person on May 31, 2021, which service was witnessed by S.M. I find these documents were served on and received by the Tenant on May 31, 2021.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid utilities pursuant to sections 46 and 55 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid utilities pursuant to sections 46 and 67 of the *Act*?
3. Is the Landlord entitled to recover the filing fee 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 parties and dated January 11, 2021, indicating a monthly rent in the amount of \$1,600.00 due on or before the first day of each month, for a tenancy commencing on January 12, 2021, and confirming the Tenant was responsible to pay 40% of the electricity bill and 20% of the “gas usage for hot water and heat”;
- A copy of a written demand letter to the Tenant dated March 29, 2021 for payment of outstanding BC Hydro and Fortis BC charges totaling \$209.46 (the “Written Demand”);
- Copies of BC Hydro and Fortis BC bills showing the total amounts due and the calculation for the Tenant’s portion of each;
- A copy of a Proof of Service Written Demand to Pay Utilities document which indicates the Written Demand was served on the Tenant in person on March 29, 2021, which service was witnessed by A.M.;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 8, 2021 for \$209.46 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 in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of May 18, 2021;
- A copy of a Proof of Service Notice to End Tenancy document which indicates the 10 Day Notice was served on the Tenant by attaching a copy to the Tenant’s door on May 8, 2021, which service was witnessed by A.M.; and
- A copy of a Direct Request Worksheet showing the utilities owing.

Analysis

I have reviewed all documentary evidence and I find that the Tenant was obligated to pay monthly rent in the amount of \$1,600.00. I also find that the Tenant was obligated to pay 40% of electricity charges and 20% of gas charges as set out in the tenancy agreement submitted.

Section 46(6) of the *Act* confirms that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and 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 issue a notice to end tenancy.

In this case, I find that the Tenant was served with and received the Written Demand in person on March 29, 2021. Further, I accept that the unpaid utility charges remained unpaid more than 30 days after the Written Demand was received by the Tenant. In accordance with Policy Guideline #39, I also find the Written Demand was received by the Tenant at least 30 days before the 10 Day Notice was issued. As a result, I find the Landlord was entitled to issue the 10 Day Notice.

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 May 11, 2021, three days after it was attached to the Tenant's door.

I accept the evidence before me that the Tenant failed to pay the utilities owed in full within 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 May 21, 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 \$209.46 for unpaid utilities.

Having been successful, I also find the Landlord is entitled to recover the \$100.00 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 must be 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 \$309.46 for unpaid utilities and in recovery of the filing fee. 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).

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: June 8, 2021

Residential Tenancy Branch