



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **OPU-DR, MNU-DR**

### **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 landlords to obtain an Order of Possession and a Monetary Order based on unpaid rent and utilities.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the landlords on September 22, 2021.

The landlords submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on October 7, 2021, the landlords sent each tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlords provided a copy two Canada Post Customer Receipts containing the tracking numbers to confirm they served the tenants.

Based on the written submissions and evidence of the landlords and in accordance with sections 89(1) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on October 7, 2021 and are deemed to have been received by the tenants on October 12, 2021, the fifth day after they were mailed.

### **Issues to be Decided**

Are the landlords entitled to an Order of Possession for unpaid rent and utilities pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent and utilities pursuant to section 67 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 landlords submitted the following relevant evidentiary material:

- a copy of a residential tenancy agreement which was signed by the landlords and the tenants on April 10, 2021 indicating a monthly rent of \$3,600.00, for a tenancy commencing on April 15, 2021;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated September 10, 2021, for \$3,800.00 in unpaid rent and \$1,287.78 in unpaid utilities. The 10 Day Notice provides that the tenants 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 September 20, 2021;
- a copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants’ door on September 10, 2021; and;
- a copy of a Direct Request Worksheet showing rent owing in the amount of \$3,600.00 for September 2021.

### Analysis

I have reviewed all documentary evidence and I find that the tenants were obligated to pay the monthly rent in the amount of \$3,600.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on September 10, 2021 and is deemed to have been received by the tenants on September 13, 2021, three days after it was posted to the door.

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 sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, September 23, 2021.

Therefore, I find that the landlords are entitled to an Order of Possession.

I note that the amount of rent on the 10 Day Notice does not match the amount of rent being claimed on the Direct Request Worksheet. The Direct Request Worksheet must clearly show any additional months for which the tenants still owe rent; or, if there has been a rent increase, the appropriate Notice of Rent Increase forms must be submitted with the Application for Dispute Resolution to substantiate the claim for the increased rent.

I find I am not able to determine the precise amount of rent owing and for this reason the landlords' application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

Section 46 (6) of the *Act* allows the landlords to treat the unpaid utilities as unpaid rent, 30 days after the tenants are given a written demand for them. I find that there is no written demand in the landlords' evidence submissions which would allow the landlords to treat the utilities as unpaid rent. For this reason, the monetary portion of the landlords' application concerning unpaid utilities is dismissed, with leave to reapply.

### Conclusion

I grant an Order of Possession to the landlords 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.

The Landlords' application for a Monetary Order for unpaid rent and utilities 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: November 29, 2021

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Residential Tenancy Branch