



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPU-DR, MNU-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 to obtain an Order of Possession based on unpaid utilities, to obtain monetary compensation for unpaid utilities, and to recover the filing fee paid for the application.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the landlord on April 29, 2022.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on May 13, 2022, the landlord sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing.

Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on May 13, 2022 and are deemed to have been received by the tenant on May 18, 2022, the fifth day after their registered mailing.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid utilities pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid utilities 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 tenant on July 14, 2021, indicating a monthly rent of \$1,539.00, due on the first day of each month for a tenancy commencing on July 14, 2021
- A copy of two utility bills from BC Hydro for the rental unit dated December 1, 2021, for \$74.37 and January 31, 2022, for \$97.26
- A copy of a demand letter from the landlord to the tenant, dated March 12, 2022, requesting payment of utilities in the amount of \$171.63
- A copy of a Proof of Service Written Demand to Pay for Utilities form which indicates that the demand letter was sent to the tenant by registered mail at 2:54 pm on March 12, 2022
- A copy of a Canada Post Customer Receipt containing the tracking number to confirm the demand letter was sent to the tenant on March 12, 2022
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated April 18, 2022, for \$171.63 in unpaid utilities. 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 4, 2022
- A copy of a Canada Post Customer Receipt containing the tracking number to confirm the 10 Day Notice was sent to the tenant by registered mail on April 18, 2022
- A Direct Request Worksheet showing the utilities owing and paid during the relevant portion of this tenancy

### Analysis

Section 46(6) of the Act allows a landlord to treat unpaid utilities as unpaid rent and issue a notice to end tenancy 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 tenancy agreement states that the tenant must put the utilities in their own name and maintain payments through the utility company directly. I find the agreement does not require the tenant to pay the utilities to the landlord.

For this reason, I find the landlord did not have the authority under section 46(6) to issue a 10 Day Notice for unpaid utilities.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated April 18, 2022, without leave to reapply.

The 10 Day Notice dated April 18, 2022 is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice the landlord's application for a Monetary Order for unpaid utilities is dismissed, with leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

The landlord's application for an Order of Possession based on the 10 Day Notice dated April 18, 2022, is dismissed without leave to reapply.

The 10 Day Notice dated April 18, 2022 is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

I dismiss the landlord's application for a Monetary Order for unpaid utilities, with leave to reapply.

I dismiss the landlord's application to recover the filing fee paid for this application without 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: June 10, 2022

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Residential Tenancy Branch