



Dispute Resolution Services

Page: 1

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 landlord 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 landlord on May 15, 2022.

The landlord submitted a copy of a Proof of Service Notice of Direct Request Proceeding form which declares that on May 17, 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 and a copy of the Canada Post tracking report to confirm they served the tenant.

Based on the written submissions and evidence of the landlord and in accordance with sections 89(1) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on May 17, 2022 and are deemed to have been received by the tenant on May 22, 2022, the fifth day after they were mailed.

Issues to be Decided

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

Is the landlord 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 landlord submitted the following relevant evidentiary material:

- a copy of a residential tenancy agreement which was signed by the landlord and the tenant on April 27, 2016, indicating a monthly rent of \$750.00, for a tenancy commencing on June 1, 2016;
- a copy of two Notice of Rent Increase forms showing the rent being increased from \$750.00 to the monthly rent amount of \$800.00;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated April 13, 2022, for \$2,400.00 in unpaid rent and \$502.20 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 April 30, 2022;
- a copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenant by registered mail at 9:34am on April 13, 2022. The landlord provided a copy of the Canada Post Customer Receipt containing the tracking number and a copy of the Canada Post tracking report to confirm they served the tenant; and;
- a copy of a Direct Request Worksheet showing the rent and utilities owing 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 \$800.00.

In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on April 13, 2022 and is deemed to have been received by the tenant on April 18, 2022, five days after it was mailed.

I accept the evidence before me that the tenant has 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 tenant is 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, April 30, 2022.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$2,400.00, the amount claimed by the landlord for unpaid rent owing for February 2022 to April 2022.

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 tenancy agreement does not specify that the tenant is to pay the utilities to the landlord. For this reason, the monetary portion of the landlord's application concerning unpaid utilities is dismissed, with leave to reapply.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2,400.00 for rent owed for February 2022 to April 2022. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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.

The landlord's application for a Monetary Order for unpaid 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: June 14, 2022

Residential Tenancy Branch