



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SKYLARK REALTY INC  
and [tenant name suppressed to protect privacy]

## **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 June 29, 2022.

The landlord submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on June 30, 2022, the landlord sent each 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 Receipts containing the tracking numbers to confirm these mailings.

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 June 30, 2022 and are deemed to have been received by the tenants on July 5, 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 on November 17, 2020 and the tenants on November 13, 2020, indicating a monthly rent of \$1,700.00, a monthly advance for utilities of \$200.00, and periodic adjustments to the utilities, for a tenancy commencing on November 15, 2020
- A copy of a utility adjustment worksheet and twenty utility bills for the rental unit from BC Hydro, Fortis, and the City of Surrey
- A copy of a demand letter from the landlord to the tenants, dated April 24, 2022, requesting payment of utilities in the amount of \$1,329.99
- A copy of a witnessed Proof of Service Written Demand to Pay for Utilities form which indicates that the demand letter was posted to the tenants' door at 11:00 am on April 24, 2022
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated June 2, 2022, for \$1,329.99.00 in unpaid utilities. The 10 Day Notice provides that the tenants had five days from the date of service to pay the utilities in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of June 18, 2022
- 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 at 10:30 am on June 2, 2022
- A Direct Request Worksheet showing the utilities owing and paid during the relevant portion of this tenancy

### Analysis

I have reviewed all documentary evidence and I find that the tenants were obligated to pay utilities over the monthly \$200.00 advance, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the utility demand letter was served on April 24, 2022 and is deemed to have been received by the tenants on April 27, 2022, three days after its posting.

I accept the evidence before me that the tenants have failed to pay the utilities within the thirty days granted under section 46(6) of the *Act*.

In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on June 2, 2022 and is deemed to have been received by the tenants on June 5, 2022, three days after its posting.

I accept the evidence before me that the tenants have failed to pay the utilities 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 section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, June 18, 2022.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$1,329.99, the amount claimed by the landlord for unpaid utilities owing from March 2021 to March 2022.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I grant an Order of Possession to the landlord 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.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,429.99 for utilities owed from March 2021 to March 2022 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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.

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: July 21, 2022

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Residential Tenancy Branch