



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 June 21, 2022.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on July 10, 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 receipt containing the tracking number to confirm this mailing in fact took place on July 11, 2022.

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 July 11, 2022 and are deemed to have been received by the tenant on July 16, 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, for a tenancy commencing on December 1, 2021
- A copy of two utility bills from BC Hydro for the rental unit dated December 9, 2021, for \$61.53 and March 18, 2022, for \$115.89
- A copy of a WeChat message dated March 29, 2022, and a direct message dated March 30, 2022, requesting payment of utilities in the amount of \$180.00
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 5, 2022, for \$260.40 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 15, 2022
- A copy of a witnessed Proof of Service Written Demand to Pay Utilities form which indicates that a 10 Day Notice was handed to a person who apparently resides with the tenant at 5:00 pm on March 28, 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 10 Day Notice 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

The landlord must prove that they served the tenant with the demand letter and a copy of the utility bill in accordance with section 88 of the Act, which allows for service by mail, by leaving a copy with the tenant, by leaving a copy in the tenant's mailbox or mail

slot, attaching a copy to the tenant's door or by leaving a copy with an adult who apparently resides with the tenant.

I find that the landlord has sent a request for utility payment by WeChat and by direct message, which are not recognized methods of service under the *Act*.

I find the demand letters were not served to the tenant in accordance with the *Act*. For this reason, I find the landlord did not have the authority to issue a 10 Day Notice in accordance with section 46(6) of the *Act*.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated May 5, 2022, without leave to reapply.

The 10 Day Notice dated May 5, 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 May 5, 2022, is dismissed without leave to reapply.

The 10 Day Notice dated May 5, 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: July 28, 2022

Residential Tenancy Branch