



# 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 rent and utilities, to obtain monetary compensation for unpaid rent and 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 July 15, 2022.

The landlord submitted a copy of two Proof of Service Notice of Direct Request Proceeding forms which declare that on August 4, 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 two Canada Post Customer Receipts containing the tracking numbers to confirm they served the tenants.

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 August 4, 2022 and are deemed to have been received by the tenants on August 9, 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*?

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 August 6, 2021 and the tenants on August 3, 2021, indicating a monthly rent of \$4,600.00, due on the first day of each month for a tenancy commencing on August 13, 2021;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated May 19, 2022, for \$6,900.00 in unpaid rent and \$5,000.00 in unpaid utilities. The 10 Day Notice provides that the tenants 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 30, 2022;
- a copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to tenant A.B. at 9:00pm on May 20, 2022; 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 in accordance with section 88 of the *Act*, I find that the 10 Day Notice was served to the tenants on May 20, 2022.

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 section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, May 30, 2022.

Therefore, I find that the landlord is entitled to an Order of Possession.

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 indicates that water is not included in the rent. However, the agreement does not specify whether the tenant is to pay the water utility to the landlord or to the water utility provider directly.

For this reason, the monetary portion of the landlord's application concerning unpaid utilities is dismissed, with leave to reapply.

I find that the monthly breakdown of rent owing on the Direct Request Worksheet is incomplete as the monthly rent owing for May 2022 does not match the monthly rent on the tenancy agreement. The Direct Request Worksheet must clearly show all months for which the tenant still owes rent in order to substantiate the landlord's claim.

For this reason, the landlord's application for a Monetary Order for unpaid rent is dismissed, with leave to reapply.

As the landlord was partially 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 section 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 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.

The landlord's 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: August 30, 2022

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Residential Tenancy Branch