



# Dispute Resolution Services

Page: 1

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 June 30, 2022.

### Notice of Dispute Resolution Proceeding – Direct Request

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on July 19, 2022, the landlord served Tenant M.V. the Notice of Dispute Resolution Proceeding - Direct Request in person. The landlord had Tenant M.V. sign the Proof of Service Notice of Direct Request Proceeding form to confirm personal service.

Based on the written submissions of the landlord and in accordance with section 89 of the *Act*, I find that the Direct Request Proceeding documents were duly served to Tenant M.V. on July 19, 2022.

I find the landlord has not submitted a copy of a Proof of Service Notice of Direct Request Proceeding form to establish service of the Direct Request documents to Tenant A.V. In its place, I find the landlord submitted a duplicate copy of form discussing service to Tenant M.V.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding – Direct Request to Tenant A.V. For this reason, I will only proceed with the portion of the landlord's application naming Tenant M.V. as a respondent.

### Issue(s) 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 and the tenants on March 31, 2022, indicating a monthly rent of \$1,600.00, due on the fifteenth day of each month for a tenancy commencing on April 1, 2022
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 17, 2022, for \$1,750.00 in unpaid rent and \$60.00 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 June 27, 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 9:49 am on June 19, 2022
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

### Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on June 19, 2022 and is deemed to have been received by Tenant M.V. on June 22, 2022, three days after its posting.

I accept the evidence before me that Tenant M.V. 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 Tenant M.V. is conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, July 2, 2022.

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

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. I find that there is no written demand in the landlord's evidence submissions which would allow the landlord to treat the utilities as unpaid rent. For this reason, the monetary portion of the landlord's application concerning unpaid utilities is dismissed, with leave to reapply.

I also note that the breakdown of rent owing on the Direct Request Worksheet adds up to \$1,670.00, which does not match the total of \$1,710.00 listed on the Worksheet or the \$1,750.00 listed on the 10 Day Notice.

I find I am not able to determine the precise amount of rent owing and 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 Tenant M.V. Should Tenant M.V. **and any other occupant** 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 Tenant M.V. must be served with **this Order** as soon as possible. Should Tenant M.V. 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.

I dismiss the landlord's application for a Monetary Order for unpaid rent and utilities 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 11, 2022

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Residential Tenancy Branch