

## **DECISION**

### **Introduction**

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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 the landlord's Application for Dispute Resolution (Application) for:

- an Order of Possession for unpaid rent and/or utilities pursuant to sections 46 and 55 of the Act
- a Monetary Order for unpaid rent and/or utilities pursuant to section 67 of the Act (\$5,100.97)
- authorization to recover the filing fee for this application from the tenants pursuant to section 72 of the Act (\$100.00)

### **Service of Notice of Dispute Resolution Proceeding - Direct Request**

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The landlord submitted a copy of three Proof of Service Notice of Direct Request Proceeding forms which declare that on October 14, 2022 they sent each tenant the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) by registered mail to the rental unit. The landlord provided a copy of three Canada Post Customer Receipts containing the tracking numbers to confirm this service. In accordance with sections 89(1) and 90 of the Act and based on the written submissions and evidence of the landlord:

- I find that the landlord sent the Proceeding Packages to the tenants by registered mail on October 14, 2022, and they are deemed to have been received by the tenants on October 19, 2022, the fifth day after they were mailed.

### **Issues to be decided**

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Is the landlord entitled to an Order of Possession based on unpaid rent and/or utilities?

Is the landlord entitled to a Monetary Order for unpaid rent and/or utilities? (\$5,100.97)

Is the landlord entitled to recover the filing fee for this application from the tenants? (\$100.00)

## Background and Evidence

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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 evidentiary material:

- a copy of a residential tenancy agreement which was signed by the landlord and the tenants on August 25, 2017, indicating a monthly rent of \$1,850.00, due on the first day of the month for a tenancy commencing on September 1, 2017;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated August 12, 2022, for \$4,750.00 in unpaid rent, and \$1,850.97 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 August 23, 2022;
- a copy of a Proof of Service Notice to End Tenancy form signed by tenant A.R. which indicates that the 10 Day Notice was personally served to tenant A.R. at 4:30 pm on August 12, 2022; and;
- a copy of a Direct Request Worksheet with an attached spreadsheet showing the rent owing and paid during the relevant period.

## Analysis

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I have reviewed all documentary evidence and I find that the tenants were obligated to pay the monthly rent in the amount of \$1,850.00, as per the tenancy agreement.

In accordance with section 88 of the *Act*, I find that the 10 Day Notice was served to the tenants on August 12, 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, August 23, 2022.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$3,250.00 for unpaid rent owing for December 2019, and January 2020 to August 2022.

In a Direct Request Proceeding, a landlord cannot pursue rent owed for a period beyond the date on which the Notice was issued to the tenants. The 10 Day Notice was issued to the tenants on August 12, 2022. Therefore, within the purview of the Direct Request process, I cannot hear the monetary portion of the landlord's application for rent owed for September 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 states that the utilities are not included in the rent. However, the agreement does not specify whether the tenants are to pay the utilities to the landlord or put the utilities in their own names.

For this reason, the monetary portion of the landlord's application concerning unpaid utilities 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

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I grant an Order of Possession to the landlord **effective two (2) days after service of this Order on the tenant(s)**. Should the tenant(s) or anyone on the premises 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 **\$3,350.00** for rent owed for December 2019, January 2020 to August 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.

The landlord's application for a Monetary Order for unpaid rent owing for September 2022 is dismissed with leave to reapply.

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: November 18, 2022

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Residential Tenancy Branch