

## **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 utilities pursuant to sections 46 and 55 of the Act
- a Monetary Order for unpaid utilities pursuant to section 67 of the Act (\$1,129.17)
- authorization to recover the filing fee for this application from the tenant 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 signed Proof of Service Landlord's Notice of Direct Request Proceeding which declares that the tenant was served with the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) in accordance with section 89 of the Act. The landlord had a witness sign the Proof of Service Notice of Direct Request Proceeding form to confirm this service. Based on the written submissions of the landlord:

- I find that Tenant B.F. was served on September 29, 2022, by posting to the door, and the Proceeding Package is deemed to have been received on October 2, 2022, the third day after their posting.

### **Issue(s) to be decided**

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Is the landlord entitled to an Order of Possession based on unpaid utilities?

Is the landlord entitled to a Monetary Order for unpaid utilities? (\$1,129.17)

Is the landlord entitled to recover the filing fee for this application from the tenant? (\$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 tenant on July 3, 2014, indicating a monthly rent of \$1,375.00, due on the first day of the month for a tenancy commencing on July 6, 2014;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated August 22, 2022 for \$1,385.34 in unpaid utilities. The 10 Day Notice provides that the tenant 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 September 6, 2022;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenant by registered mail at 4:05 pm on August 22, 2022;
- A copy of a Canada Post tracking report containing the tracking number to confirm the 10 Day Notice was sent to the tenant on August 22, 2022;
- A Direct Request Worksheet and ledger showing the utilities owing and paid during the relevant portion of this tenancy.

## Analysis

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### Is the landlord entitled to an Order of Possession based on unpaid utilities?

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 tenant is responsible for the utilities. However, the agreement does not specify whether the tenant is to pay the utilities to the landlord or put the utilities in their own name.

I find the agreement does not clearly require the tenant to pay utilities to the landlord and for this reason, I find the landlord did not have the authority under section 46(6) of the Act to issue a 10 Day Notice for unpaid utilities.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated August 22, 2022, without leave to reapply.

The 10 Day Notice dated August 22, 2022, is cancelled and of no force or effect.

### **Is the landlord entitled to a Monetary Order for unpaid utilities?**

In a Direct Request, the landlord can only pursue an amount of rent and/or utilities associated with a valid 10 Day Notice issued to the tenant. I also note that the purpose of a Direct Request is primarily to obtain an Order of Possession and not to obtain a faster resolution on a purely financial claim.

As the landlord was not successful in obtaining an Order of Possession for unpaid utilities, I find I cannot consider the landlord's request for monetary compensation for unpaid utilities.

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

### **Is the landlord entitled to recover the filing fee for this application from the tenant?**

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**

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The landlord's application for an Order of Possession based on the 10 Day Notice dated August 22, 2022, is dismissed, without leave to reapply.

The 10 Day Notice dated August 22, 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: November 1, 2022

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Residential Tenancy Branch