



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 17, 2011 the landlord served the tenants with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5<sup>th</sup> day after it is mailed.

Based on the written submissions of the landlord, I find that the tenants have been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the landlord and both tenants on February 26, 2011 for a month to month tenancy beginning on March 1, 2011 for the monthly rent of \$800.00 due on the 1<sup>st</sup> of each month;
- A document entitled "Amendment" signed by the landlord and one of the tenants dated April 14, 2011 that states that "rent shall be in the amount of \$950.00 per month which includes \$800.00 base rent and \$150.00 charge for utilities and shall be payable in cash on or before the 1<sup>st</sup> day of each rental month"; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on August 9, 2011 with an effective vacancy date of August 19, 2011 due to \$950.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent and utilities owed for the month of August 2011 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent personally on August 9, 2011 at 11:00 a.m. and that this service was witnessed by a third party.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

### Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on August 5, 2011 and the effective date of the notice is amended to August 15, 2011, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenant is conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Section 46 of the *Act* states that if the tenancy agreement requires the tenant to pay utility charges to the landlord and the utility charges are unpaid for more than 30 days after the tenant is given written demand for payment of them the landlord may treat the unpaid utility charges as unpaid rent.

As the 10 Day Notice to End Tenancy for Unpaid Rent issued on August 9, 2010 was not 30 days passed the day the utility charges were due and the landlord provided no evidence that he had provided the tenant with a written demand for payment 30 days prior to issuing the 10 Day Notice, I find the utility charges cannot be considered rent, at this time.

As the Direct Request process is based solely on written submissions and is intended to adjudicate claims for unpaid rent only, I find this process is not suitable to determine if the tenant owes the landlord any utility charges. I, therefore, dismiss this portion of the landlord's Application with leave to reapply.

### Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$800.00** comprised of rent owed.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 23, 2011.

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Residential Tenancy Branch