



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, MNU-DR

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 utilities and to obtain monetary compensation for unpaid utilities.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the landlord on January 18, 2022.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on January 28, 2022, the landlord sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing.

Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on January 28, 2022 and are deemed to have been received by the tenant on February 2, 2022, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid utilities pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid utilities pursuant to section 67 of the *Act*?

Background and Evidence

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement indicating a monthly rent of \$5,000.00, due on the first day of each month for a tenancy commencing on October 1, 2018

- A copy of four utility bills from the District of West Vancouver for the rental unit
- A copy of a demand letter from the landlord to the tenant, dated November 15, 2021, requesting the tenant pay utilities in the amount of \$3,824.33 directly to the utility company
- A copy of a Proof of Service Written Demand to Pay for Utilities form which indicates that the demand letter was sent to the tenant by registered mail at 4:43 pm on November 16, 2021
- A copy of a Canada Post Customer Receipt containing the Tracking Number to confirm the demand letter was sent to the tenant on November 16, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated December 22, 2021, for \$3,824.33 in unpaid utilities. The 10 Day Notice provides that the tenant 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 January 5, 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 4:30 pm on December 22, 2021
- A copy of a Canada Post Customer Receipt containing the Tracking Number to confirm the 10 Day Notice was sent to the tenant on December 22, 2021
- A Direct Request Worksheet showing the utilities owing and paid during the relevant portion of this tenancy

Analysis

Section 46(6) of the Act allows a landlord to treat unpaid utilities as unpaid rent and issue a 10 Day Notice 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 note that the tenancy agreement states that the utilities are not included in the tenant's rent; however, I find it does not specify that the tenant is to pay the utilities to the landlord. I also note that the demand letter instructs the tenant to pay the utilities directly to the utility company, and not to the landlord.

I find the tenant was not obligated to pay utilities to the landlord and for this reason, the landlord is not entitled to treat unpaid utilities as unpaid rent for the purposes of ending the tenancy.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated December 22, 2021, without leave to reapply.

The 10 Day Notice dated December 22, 2021, is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice the landlord's application for a Monetary Order for unpaid utilities is dismissed, with leave to reapply.

Conclusion

The landlord's application for an Order of Possession based on the 10 Day Notice dated December 22, 2021, is dismissed, without leave to reapply.

The 10 Day Notice dated December 22, 2021, 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.

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: February 11, 2022

Residential Tenancy Branch