



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR-DR, MNR-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 March 17, 2022.

The landlord submitted a copy of two Proof of Service Notice of Direct Request Proceeding forms which declare that on March 24, 2022, the landlord sent each tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlord provided a copy of two Canada Post Customer Receipts containing the tracking numbers to confirm they served the tenants.

Based on the written submissions and evidence of the landlord and in accordance with sections 89(1) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on March 24, 2022 and are deemed to have been received by the tenants on March 29, 2022, the fifth day after they were mailed.

### Issues 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

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 May 11, 2021, indicating a monthly rent of \$1,050.00, due on the first day of each month for a tenancy commencing on May 16, 2021;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated March 3, 2022, for \$675.00 in unpaid rent and \$75.00 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 March 17, 2022;
- a copy of two witnessed Proof of Service Notice to End Tenancy forms which indicate that the 10 Day Notice was served to each tenant by leaving a copy in the tenants’ mailbox at 3:00pm on March 3, 2022;
- a copy of a service agreement dated October 28, 2021 which indicates that the landlord named on the 10 Day Notice is agent for the landlord; and;
- a copy of a Direct Request Worksheet showing the rent and utilities owing and paid during the relevant period.

## Analysis

I have reviewed all documentary evidence and I find that the tenants were obligated to pay the monthly rent in the amount of \$1,050.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on March 3, 2022 and is deemed to have been received by the tenants on March 6, 2022, three days after it was left in the tenants’ mailbox.

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, March 17, 2022.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$675.00, the amount claimed by the landlord for unpaid rent owing for March 2022.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenants are 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.

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 the tenant(s). Should the tenant(s) 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 \$775.00 for rent owed for March 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 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: April 19, 2022

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Residential Tenancy Branch