



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL OPRM-DR

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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted two witnessed Proofs of Service of the Notices of Direct Request Proceeding which declare that on November 17, 2018, the landlords served the tenants the Notice of Direct Request Proceeding in person. Based on the written submissions of the landlords and in accordance with section 89 of the *Act*, I find that the tenants were duly served with the Direct Request Proceeding documents on November 17, 2018.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenants on November 12, 2017, indicating a monthly rent of \$2,400.00, due on the first day of each month for a tenancy commencing on December 1, 2017;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 18, 2018, for \$1,300.00 in unpaid rent. The 10 Day Notice provides that the tenants have 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 October 28, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was served to the tenants in person at 6:00pm on October 18, 2018; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on October 18, 2018.

I find that the tenants were obligated to pay the monthly rent in the amount of \$2,400.00, as per the tenancy agreement.

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, October 28, 2018.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary award in the amount of \$1,300.00, the amount claimed by the landlords, for unpaid rent owing for October 2018 as of November 15, 2018.

I find that the amount claimed for November 2018 was not included in the 10 Day Notice submitted. For this reason, I dismiss the portion of the landlords' application for a Monetary Order for unpaid rent for November 2018, with leave to reapply.

As the landlords were partially successful in their application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenants. Should the tenants 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 landlords a Monetary Order in the amount of \$1,400.00 for rent owed for October 2018 and for the recovery of the filing fee for this application. The landlords are provided with this Order in the above terms and the tenants must be served with **this Order** as soon as possible. Should the tenants 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.

I dismiss the landlords' application for a Monetary Order for unpaid rent owing for November 2018 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 21, 2018

Residential Tenancy Branch