



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-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 for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 27, 2019, the landlord personally served Tenant S.H. the Notice of Direct Request Proceeding. The landlord had Tenant S.H. sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89(1) of the *Act*, I find that Tenant S.H. has been duly served with the Direct Request Proceeding documents on May 27, 2019.

The landlord submitted two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on May 27, 2019, the landlord served Tenant W.H. and Tenant K.A. the Notice of Direct Request Proceeding by handing the documents to Tenant S.H. The landlord had Tenant S.H. sign the Proofs of Service of the Notices of Direct Request Proceeding to confirm this service. Based on the written submissions of the landlord and in accordance with section 89(2) of the *Act*, I find that Tenant W.H. and Tenant K.A. have been duly served with the Direct Request Proceeding documents on May 27, 2019.

Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation for unpaid rent 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

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 relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by a landlord who is not the applicant and the tenants on December 5, 2018, indicating a monthly rent of \$1,900.00, due on the first day of each month for a tenancy commencing on December 15, 2018;
- A copy of a letter discussing the transfer of property management responsibilities from the landlord's agent, who is named in the tenancy agreement, to the owner, who is applying for dispute resolution;
- A copy of a note from the landlord indicating that the ex-property manager offered the tenants a discount that was not approved by the landlord and proposing a different amount for the discounted rent;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 16, 2019, for \$1,900.00 in unpaid rent. 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 May 26, 2019;
- A copy of a Proof of Service Notice to End Tenancy form which was signed by Tenant W.H. and indicates that the 10 Day Notice was personally served to the tenants on May 16, 2019; 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 May 16, 2019.

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, May 26, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of May 24, 2019.

I find that the amount of rent on the 10 Day Notice does not match with the discounted rent offered by the ex-property manager or the discounted rent proposed by the landlord. I find I am not able to determine the precise amount of rent owing and for this reason the landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

In this type of matter, the landlord must prove they served the tenants with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per section 89 of the *Act*.

Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be given to the tenant by leaving a copy with an adult who resides with the tenant.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be given to the tenant by leaving a copy with an adult who resides with the tenant, only when considering an Order of Possession for the landlord.

I find that the landlord has served the Notices of Direct Request Proceeding to Tenant W.H. and Tenant K.A. by leaving copies with Tenant S.H., an adult who resides with Tenant W.H. and Tenant K.A.

For this reason, and 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 from Tenant S.H.

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 section 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and Tenant S.H. must be served with **this Order** as soon as possible. Should Tenant S.H. 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 landlord's application for a Monetary Order for unpaid rent 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: May 30, 2019

Residential Tenancy Branch