



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EDGEWATER PLACE
APTS and [tenant name suppressed to protect
privacy]

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 two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on August 8, 2019, the landlord posted the Notices of Direct Request Proceeding to the door of the rental unit. The landlord had a witness 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 sections 89(2) and 90 of the *Act*, I find that the tenants are deemed to have been served with the Direct Request Proceeding documents on August 11, 2019, the third day after their posting.

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 the landlord and Tenant R.D. on August 29, 2018, indicating a monthly rent of \$1,500.00, due on the first day of each month for a tenancy commencing on September 1, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 8, 2019, for \$1,400.00 in unpaid rent. The 10 Day Notice provides that Tenant R.D. 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 July 18, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants' door at 1:11 pm on July 7, 2019; and
- A Direct Request Worksheet and ledger showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

I have reviewed all documentary evidence and I note that the Proof of Service Notice to End Tenancy indicates that the 10 Day Notice was attached to the tenants' door on July 7, 2019. However, the landlord has indicated in their Application for Dispute Resolution that the 10 Day Notice was posted to the tenants' door on July 8, 2019. I also find that the date of the 10 Day Notice is July 8, 2019.

Therefore, I find it reasonable to conclude that the 10 Day Notice was in fact served to the tenants on July 8, 2019.

In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on July 11, 2019, three days after its posting.

Section 13(2)(b) of the Act establishes that the tenancy agreement is required to identify “the correct legal names of the landlord and tenant”

I find that Tenant D.W. is not named in the tenancy agreement, which is a requirement of the Direct Request Process. For this reason, I will only proceed with the portion of the landlord’s application naming Tenant R.D. as a respondent.

I find that Tenant R.D. was obligated to pay the monthly rent in the amount of \$1,500.00, as per the tenancy agreement.

I accept the evidence before me that Tenant R.D. has 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 Tenant R.D. is conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, July 21, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of the date of this application, July 29, 2019.

In this type of matter, the landlord must prove they served the tenant 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 attaching a copy to a door at the address at which the tenant resides.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be given to the tenant by attaching a copy to a door at the address at which the tenant resides, only when considering an Order of Possession for the landlord.

I find that the landlord has served the Notice of Direct Request Proceeding to the door of the rental unit at which the tenants reside, and for this reason, the monetary portion of the landlord’s application for unpaid rent is dismissed, with leave to reapply.

For the same reason noted above, the landlord’s application to recover the filing fee paid for this application is dismissed, without leave to reapply.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on Tenant R.D. Should Tenant R.D. **and any other occupant** fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlord's application for a Monetary Order for unpaid rent with leave to reapply.

I dismiss the landlord's application to recover the filing fee paid for this application without 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: August 12, 2019

Residential Tenancy Branch