



Dispute Resolution Services

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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 two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on August 26, 2019, the landlord sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants are deemed to have been served with the Direct Request Proceeding documents on August 31, 2019, the fifth day after their registered mailing.

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

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 April 30, 2019, indicating a monthly rent of \$1,050.00, due on the last day of each month for a tenancy commencing on May 1, 2019;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 1, 2019, for \$1,050.00 in unpaid rent. 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 August 11, 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 9:30 pm on August 1, 2019;
- A copy of a receipt dated August 22, 2019, for \$1,050.00 of rent, paid by the tenants, which the landlord has indicated is "for use and occupancy only";
- A copy of a note from the landlord indicating that the tenants have paid the full rent for August 2019 as well as the filing fee paid for this application; 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 sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on August 4, 2019, three days after its posting.

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

I accept the evidence before me that the tenants have failed to pay the rent owed in full by August 9, 2019, 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 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, August 14, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of the date of this application, August 16, 2019.

The landlord has indicated that the rent for August 2019 and the filing fee have been paid in full. For this reason, the landlord's application for a Monetary Order for the filing fee and for unpaid rent owing for August 2019 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 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.

I dismiss the landlord's application for a Monetary Order for unpaid rent owing for August 2019 and for 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: September 03, 2019

Residential Tenancy Branch