



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR – DR OPUM – DR

Introduction

This application has been made via the Direct Request Proceeding; an ex parte process pursuant to section 55(4) of the *Residential Tenancy Act* (the *Act*.)

The landlord has applied requesting an order of possession and monetary order based on unpaid rent.

The landlord submitted a single proof of service document which declares that on September 27, 2019 the landlord served each tenant notice of the direct request proceeding by registered mail, to the rental unit address. The landlord provided copies of the Canada Post receipts and tracking numbers as confirmation of separate service to each tenant.

Based on the written submissions of the landlord I find that each tenant has been served the proceeding documents in accordance with section 89(2)(b) of the *Act*.

In accordance with section 90(a) of the *Act* I find that the tenants are each deemed served with notice of the direct request proceeding effective the fifth day after mailing; October 02, 2019.

Issue(s) to be Decided

Is the landlord entitled to an order of possession based on unpaid rent?

Is the landlord entitled to a monetary order based on unpaid rent?

Background and Evidence

The landlord submitted the following documents:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on July 15, 2019, indicating a monthly rent of \$2,000.00, due on the

first day of each month. The tenancy agreement indicates that until a shower stall is fixed rent will be \$1,950.00;

- A copy of a 10 day Notice to end tenancy for unpaid rent or utilities (the Notice) issued on September 07, 2019 with an effective date of September 20, 2019. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,000.00 within five (5) days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental unit by the date set out in the Notice unless the tenants filed an application for dispute resolution within five (5) days;
- A copy of a proof of service form signed by witness T.V. and landlord C.N, declaring that the Notice was served to the tenants by posting to the door of the rental unit on September 07, 2019 at 3:30 p.m. A photograph of an envelope posted to a door, addressed to tenant K.C., is supplied as evidence; and
- A direct request worksheet indicating that rent owed on September 01, 2019 was not paid. The landlord submits that payment in the sum of \$400.00 was made on September 03, 2019 and September 13, 2019 and a further \$430.00 on September 18, 2019; with outstanding September 2019 rent in the sum of \$770.00 claimed by the landlord.

Analysis

Based on the evidence before me I find that the tenants owe rent in the sum of \$2,000.00 per month, to be paid on the first day of each month.

Based on the written submission of the landlord I find, pursuant to section 88(g) that the Notice was served to the tenants by posting to the rental unit door on September 07, 2019.

Section 90(c) of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. Therefore, I find that the tenants received the Notice to end tenancy on September 10, 2019.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy for unpaid rent and utilities is effective 10 days after the date that the tenant receives the Notice. As the tenants are deemed to have received this Notice on September 10, 2019, I find that the earliest effective date of the Notice is September 20, 2019.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice ending tenancy that required the tenants to vacate the rental unit on the effective date of the Notice; September 20, 2019.

Section 46(4) of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an application for dispute resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenants exercised either of these rights.

Section 46(5) of the Act provides:

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

Therefore, pursuant to section 46(5) of the Act, as there is no evidence the rent was paid in full or that the tenants disputed the Notice, I find that the tenants accepted that the tenancy has ended on the effective date of the Notice; September 20, 2019.

Pursuant to section 55(4)(a) of the Act I find that the landlord is entitled to an order of possession. The order is effective **two days after service** to 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.

As there is no evidence before me that the tenants paid the rent, pursuant to section 55(4)(b) of the Act I find that the landlord is entitled to compensation in the sum of \$770.00 for unpaid September 2019 rent.

Pursuant to section 72(1) of the Act I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants.

The landlord is issued a monetary order in the sum of \$870.00 which must be served to the tenants. 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.

Conclusion

The landlord is entitled to an order of possession based on unpaid September 2019 rent.

The landlord is entitled to a monetary order based on unpaid September 2019 rent.

The landlord is entitled to filing fee costs.

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: October 16, 2019

Residential Tenancy Branch