



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

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 8, 2019, the landlords sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on November 13, 2019, the fifth day after their registered mailing.

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 relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenant on May 2, 2019, indicating a monthly rent of \$950.00, due on the first day of each month for a tenancy commencing on May 4, 2019;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 21, 2019, for \$800.00 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 November 6, 2019;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenant by registered mail at 9:27 am on October 22, 2019;
- A copy of a Canada Post receipt containing the Tracking Number to confirm the 10 Day Notice was sent to the tenant on October 22, 2019;
- A copy of a note from the landlords indicating that the tenant paid the rent for October 2019 on November 4, 2019 and that the landlords advised the tenant this payment was accepted for use and occupancy only; 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 I find that the tenant was obligated to pay the monthly rent in the amount of \$950.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on October 27, 2019, five days after its registered mailing.

I accept the evidence before me that the tenant has failed to pay the rent owed in full by November 1, 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 tenant is 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, November 6, 2019.

Therefore, I find that the landlords are entitled to an Order of Possession for unpaid rent as of the date of this application, November 3, 2019.

The landlords have indicated that the tenant has paid the full October 2019 rent indicated on the 10 Day Notice on November 4, 2019. Therefore, the landlords' application for a Monetary Order for unpaid rent owing for October 2019 is dismissed without leave to reapply.

In a Direct Request Proceeding, a landlord cannot pursue rent owed for a period beyond the date on which the Notice was issued to the tenant. The 10 Day Notice was sent to the tenant on October 22, 2019. Therefore, within the purview of the Direct Request Process, I cannot hear the monetary portion of the landlords' application for rent owed for November 2019.

For this reason, the landlords' application for a Monetary Order for unpaid rent owing for November 2019 is dismissed with leave to reapply.

As the landlords were partially successful in this 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 tenant. Should the tenant 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 landlords a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlords are provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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 October 2019 without leave to reapply.

I dismiss the landlords' application for a Monetary Order for unpaid rent owing for November 2019 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 14, 2019

Residential Tenancy Branch