



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-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.

The landlord submitted two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on November 19, 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 November 22, 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 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 An.C. on December 19, 2018, indicating a monthly rent of \$2,100.00, due on the first day of each month for a tenancy commencing on December 19, 2018;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 12, 2019, for \$2,000.00 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 September 25, 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 4:30 pm on September 12, 2019; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

Paragraph 12 (1) (b) of the Residential Tenancy Regulation establishes that a tenancy agreement is required to be "signed and dated by both the landlord and the tenant."

I find that Tenant Am.C. has not signed 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 An.C. as a respondent.

I have reviewed all documentary evidence and I find that Tenant An.C. was obligated to pay the monthly rent in the amount of \$2,100.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that Tenant An.C. was deemed served with the 10 Day Notice on September 15, 2019, three days after its posting.

I accept the evidence before me that Tenant An.C. 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 An.C. 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, September 25, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of the date of this application, November 7, 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 Tenant An.C. resides, and for this reason, 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 An.C. Should Tenant An.C. **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 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: November 25, 2019

Residential Tenancy Branch