



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 three signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on January 21, 2020, the landlord personally served each of the tenants the Notice of Direct Request Proceeding. The landlord had a witness sign the Proofs of Service of the Notices of Direct Request Proceeding to confirm personal service. Based on the written submissions of the landlord and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on January 21, 2020.

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 Tenant Y.M. on August 18, 2019, indicating a monthly rent of \$2,150.00, due on the first day of each month for a tenancy commencing on September 1, 2019;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 9, 2020, for \$1,075.00 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 January 19, 2020;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the tenants on January 9, 2020; 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 section 88 of the Act, I find that the tenants were duly served with the 10 Day Notice on January 9, 2020.~~

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~~Section 46 (4) of the Act states that within five days of a tenant receiving the 10 Day Notice, the tenant may either pay the rent or dispute the 10 Day Notice.~~

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~~I find that the fifth day for the tenants to have either paid the rent or disputed the notice was January 14, 2020. I further find that the earliest date that the landlord could have applied for dispute resolution was January 15, 2020.~~

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~~I find that the landlord applied for dispute resolution on January 14, 2020, the last day that the tenants had to dispute the 10 Day Notice and that the landlord made their application for dispute resolution too early.~~

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~~Therefore, the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice dated January 9, 2020 is dismissed, with leave to reapply.~~

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~~For the same reasons identified above, the landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.~~

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~~As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.~~

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 I.B. and Tenant O.J. have not signed the tenancy agreement, which is a requirement of the Direct Request process. For this reason, the

monetary portion of the landlord's application naming Tenant I.B. and Tenant O.J. as respondents is dismissed without leave to reapply.

However, I find that Tenant Y.M. was obligated to pay the monthly rent in the amount of \$2,150.00, as per the tenancy agreement.

In accordance with section 88 of the *Act*, I find that Tenant Y.M. was duly served with the 10 Day Notice on January 9, 2020.

I accept the evidence before me that Tenant Y.M. 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 Y.M. 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, January 19, 2020.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$1,075.00, the amount claimed by the landlord for unpaid rent owing for January 2020, as of the date of this application, January 20, 2020.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

~~I dismiss the landlord's application for an Order of Possession on the basis of the 10 Day Notice dated January 9, 2020, with leave to reapply.~~

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

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~~I dismiss the landlord's application to recover the filing fee paid for this application without leave to reapply.~~

I grant an Order of Possession to the landlord effective two days after service of this Order on Tenant Y.M. Should Tenant Y.M. 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.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,175.00 for rent owed for January 2020 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and Tenant Y.M. must be served with this Order as soon as possible.

Should Tenant Y.M. 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 portion of the landlord's application for a Monetary Order naming Tenant I.B. and Tenant O.J. as respondents 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: January 27, 2020

Residential Tenancy Branch

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON **January 27, 2020**
AT THE PLACES INDICATED IN **BOLD** OR USING ~~STRIKETHROUGH~~.

Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.gov.bc.ca/landlordtenant) has information about:

- How and when to enforce an order of possession:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to enforce a monetary order:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to have a decision or order corrected:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the correction process
- How and when to have a decision or order clarified:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the clarification process
- How and when to apply for the review of a decision:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the review process
Please Note: Legislated deadlines apply

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.gov.bc.ca/landlordtenant

Residential Tenancy Branch

#RTB-136 (2014/12)

