



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM 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 February 26, 2020, the landlords personally served the tenant the Notice of Direct Request Proceeding. The landlords had the tenant and a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlords and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on February 26, 2020.

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

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 landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenant on September 3, 2019, indicating a monthly rent of \$1,700.00, due on the first day of each month for a tenancy commencing on September 3, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 2, 2020, for \$544.42 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 February 12, 2020;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was handed to Person P.D. at 11:00 am on February 2, 2020; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

In this type of matter the landlord must prove that they served the tenant with the 10 Day Notice in a manner that is considered necessary as per sections 71(2) (a) and 88 of the *Act*. Section 88 of the *Act* allows for the 10 Day Notice to be left with an adult who resides with the tenant.

The Proof of Service Notice to End Tenancy indicates service to Person P.D., but there is no indication or documentation in the evidence that the person who received the documents is an adult or that they reside with the tenant.

I also find that the Proof of Service Notice to End Tenancy does not include a signature of a witness, or a signature of the person who received the 10 Day Notice, to confirm service of the 10 Day Notice.

As I am not able to confirm service of the 10 Day Notice to the tenant in accordance to section 88 of the *Act*, which is a requirement of the Direct Request Proceeding, I find that a hearing is necessary to address this issue.

Conclusion

I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. I find that a participatory hearing to be conducted by an arbitrator appointed under the *Act* is required in order to determine the details of the landlords' application.

Notices of Reconvened Hearing are enclosed with this interim decision. The applicants must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 89 of the *Act*.

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to rely upon at the new hearing. Fact sheets are available at <http://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/information-sheets/rtb114.pdf> that explain evidence and service requirements.

For more information see our website at: gov.bc.ca/landlordtenant. If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

Lower Mainland: 604-660-1020

Victoria: 250-387-1602

Elsewhere in BC: 1-800-665-8779

This interim 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: February 27, 2020

Residential Tenancy Branch