



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR-PP, 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 a signed Proof of Service Notice of Direct Request Proceeding which declares that on September 26, 2020, the landlord personally served the tenant the Notice of Direct Request Proceeding. The landlord had the tenant and a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord 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 September 26, 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 the tenant on October 31, 2019, indicating a monthly rent of \$900.00, due on the first day of each month for a tenancy commencing on November 1, 2019;
- A copy of a Repayment Plan dated August 25, 2020, indicating the first affect rent installment of \$327.27 was due on October 1, 2020;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 5, 2020, for \$4,600.00 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 September 15, 2020;
- A copy of a Proof of Service Notice to End Tenancy form which was signed by the tenant and indicates that the 10 Day Notice was personally served to the tenant at 2:00 (a.m. or p.m. not indicated) on September 5, 2020; and
- A Direct Request Worksheet and Monetary Order 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 \$900.00, as per the tenancy agreement.

In accordance with section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on September 5, 2020.

I accept the evidence before me that the tenant 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 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, September 15, 2020.

I note that the only monetary award available to a landlord by way of the Direct Request process is for unpaid rent and unpaid utilities. As the landlord has also sought a monetary award for matters relating to five late charges in the amount of \$20.00 each, I would not be able to consider this aspect of the landlord's claim through the Direct Request process.

Policy Guideline #52 provides the following information pertaining to the *COVID-19 Related Measures Act (the C-19 Act)*:

"A landlord must not give a tenant a 10 Day Notice to End Tenancy for unpaid affected rent unless the landlord has previously given the tenant a valid repayment plan and the tenant fails to pay an installment on the date it is due as set out in the applicable repayment plan."

I note that the 10 Day Notice issued to the tenant includes amounts owing from May 2020 to August 2020, which is considered affected rent.

The landlord submitted a copy of a repayment plan dated August 25, 2020 indicating that the first repayment installment would be due on October 1, 2020.

However, find that the landlord issued the 10 Day Notice on September 5, 2020, before the first installment of the affected rent was due, which is not in accordance with Policy Guideline #52.

For this reason, I find I cannot consider the portion of the landlord's claim for unpaid affected from May 2020 to August 2020.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$900.00, the amount claimed by the landlord for unpaid rent owing for September 2020, as of the date of this application, September 24, 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 grant an Order of Possession to the landlord 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 sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,000.00 for rent owed for September 2020 and for the recovery of the filing fee for this application. The landlord is 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 landlord's application for a Monetary Order for late fees and unpaid affected rent from May 2020 to August 2020 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: October 13, 2020

Residential Tenancy Branch