



Dispute Resolution Services

Page: 1

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

The landlords submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on September 26, 2020, the landlords personally served each of the tenants the Notice of Direct Request Proceeding. The landlords had the tenants and a witness sign the Proof of Service Notice of Direct Request Proceeding forms to confirm personal service. Based on the written submissions of the landlords 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 September 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 Tenant A.S. on November 1, 2019, indicating a monthly rent of \$1,300.00, due on the first day of each month for a tenancy commencing on November 1, 2019;
- A copy of a letter from the landlords to the tenants dated August 3, 2020 indicating the tenants would be required to start paying the affected rent arrears, with the first installment of \$321.82 due on September 1, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 2, 2020, for \$1,621.82 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 14, 2020;
- 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 4:06 pm on September 2, 2020; 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 R.Q. 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 landlords' application naming Tenant A.S. as a respondent.

I find that Tenant A.S. was obligated to pay the monthly rent in the amount of \$1,300.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that Tenant A.S. was deemed served with the 10 Day Notice on September 5, 2020, three days after its posting.

I accept the evidence before me that Tenant A.S. 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 A.S. is conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, September 15, 2020.

In a Direct Request Proceeding, a landlord cannot pursue rent owed for an amount beyond the amount noted on the 10 Day Notice that was issued to the tenant. I find the

10 Day Notice only lists amounts owing for September 2020 and the first repayment installment of affected rent. For this reason, I can only hear the portion of the landlords' application for a monetary claim related to these amounts.

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

"A landlord cannot pursue an eviction for unpaid affected rent unless they have already given a valid repayment plan or there is a valid prior agreement still in effect..."

The C19 Tenancy Regulation sets out that repayment plans must have the following terms:

- 1. The repayment period starts on the date the repayment plan is given by the landlord to the tenant and ends on July 10, 2021;*
- 2. The payment of the unpaid affected rent must be in equal installments;*
- 3. Each installment must be paid on the same date that rent is due under the tenancy agreement; and*
- 4. The date of the first installment must be at least 30 days after the date the repayment plan is given by the landlord to the tenant."***

I find that the repayment letter provided by the landlords is dated August 3, 2020 which is less than 30 days from the date the first installment was due, and that not enough time has passed to allow the landlords to issue a 10 Day Notice for an unpaid affected rent installment. For this reason, the portion of the landlords' monetary claim related to the first affected rent installment is dismissed with leave to reapply.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary award in the amount of \$1,300.00, the amount claimed by the landlords for unpaid rent owing for September 2020, as of the date of this application, September 18, 2020.

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 Tenant A.S. Should Tenant A.S. **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 landlords a Monetary Order in the amount of \$1,400.00 for rent owed for September 2020 and for the recovery of the filing fee for this application. The landlords are provided with this Order in the above terms and Tenant A.S. must be served with **this Order** as soon as possible. Should Tenant

A.S. 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 landlords' application for a Monetary Order for unpaid rent owing for September 2020 naming Tenant R.Q. as a respondent without leave to reapply.

I dismiss the balance of the landlords' application for a Monetary Order 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 15, 2020

Residential Tenancy Branch