



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* ("Act"). It dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a Monetary Order based on unpaid rent.

The Landlord did not submit a signed Proof of Service of the Notice of Direct Request Proceeding for Tenant, D.G.D. For this reason, the monetary portion of the Landlord's Application is dismissed, with leave to reapply.

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 \$100.00 filing fee for this Application pursuant to section 72 of the Act?

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the Landlord and the Tenant on May 18, 2020, indicating a monthly rent of \$2,200.00, due on the first day of each month for a tenancy commencing on June 1, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") dated September 2, 2020, for \$2,200.00 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 to apply for Dispute Resolution, or the tenancy would end on the stated

effective vacancy date of September 11, 2020, automatically corrected to September 12, 2020 pursuant to section 53 of the Act;

- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was given to the Tenant in person (a.m. or p.m. not indicated) on September 2, 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 sections 88 and 90 of the Act, I find that the Tenant was deemed served with the 10 Day Notice on September 2, 2020.

I find that the Tenant was obligated to pay the monthly rent in the amount of \$2,200.00, as per the tenancy agreement.

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 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 12, 2020.

Therefore, I find that the Landlord is entitled to an Order of Possession and a monetary award in the amount of \$2,200.00, the amount claimed by the Landlord, for unpaid rent owing for September 2020, as of September 1, 2020.

As the Landlord was 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.

Given that the Landlord did not provide a proof of service of the Direct Request Application on the Tenant, I dismiss the monetary claim with leave to reapply. This Decision does not affect the

Pursuant to sections 67 and 72 of the Act, I grant the Landlord a Monetary Award for the recovery of the \$100.00 Application filing fee. The Landlord is authorized to deduct \$100.00 from the Tenant's security deposit in full satisfaction of this Award.

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 3, 2020

Residential Tenancy Branch