



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Middlegate Developments Ltd and
[tenant name suppressed to protect privacy]

INTERIM DECISION

Dispute Codes OPR-DR, 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 October 23, 2020, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to an address that is not the rental unit. The landlord provided a copy of the Canada Post receipt containing the Tracking Number to confirm this mailing. The landlord also submitted a typed letter dated October 23, 2020, indicating that service to this alternative address is acceptable.

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

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 landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on September 28, 2019, indicating a monthly rent of \$1,864.00, due on the last day of each month for a tenancy commencing on November 1, 2019;
- A copy of the first page of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 5, 2020, for \$1,864.00 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 October 16, 2020;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenant by registered mail at 11:20 (a.m. or p.m. not indicated) on October 6, 2020;
- A copy of a Canada Post receipt containing the Tracking Number to confirm the 10 Day Notice was in fact sent to the tenant on October 5, 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 they served the tenant with the Notice of Direct Request Proceeding with all the required inclusions as indicated on the Notice as per section 89 of the *Act* which permits service by sending a copy by registered mail to the address at which the person resides or, by sending a copy by registered mail to a forwarding address provided by the tenant.

I find that the landlord sent the Notice of Direct Request Proceeding and the 10 Day Notice to an address that is not the rental address established in the tenancy agreement.

The landlord submitted a copy of a typed letter dated October 23, 2020 advising the landlord to use this alternative address; however, I find this letter is not signed by the tenant.

I also note that section 52 of the *Act* requires a notice to end tenancy given by the landlord to be in the approved form. I find that the landlord did not submit the second page of the 10 Day Notice. In a Direct Request Proceeding, I find I am not able to confirm whether the landlord served the tenant the complete two-page 10 Day Notice as required under section 52 of the *Act*.

I find these discrepancies raise questions that can only be addressed in a participatory hearing.

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 landlord's application.

Notices of Reconvened Hearing are enclosed with this interim decision. The applicant 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 reply 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: November 13, 2020

Residential Tenancy Branch