



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Randall North Real Estate
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPU-DR, OPUM-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 November 5, 2020, the landlord personally served Tenant K.J. the Notice of Direct Request Proceeding. The landlord had a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm personal service. Based on the written submissions of the landlord and in accordance with section 89(1) of the *Act*, I find that Tenant K.J. has been duly served with the Direct Request Proceeding documents on November 5, 2020.

The landlord submitted second a signed Proof of Service Notice of Direct Request Proceeding which declares that on November 5, 2020, the landlord served Tenant S.S. the Notice of Direct Request Proceeding by handing the documents to Tenant K.J. The landlord had a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm this service. Based on the written submissions of the landlord and in accordance with section 89(2) of the *Act*, I find that Tenant S.S. has been duly served with the Direct Request Proceeding documents on November 5, 2020.

Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be given to the tenant by leaving a copy with an adult who resides with the tenant.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be given to the tenant by leaving a copy with an adult who resides with the tenant, only when considering an Order of Possession for the landlord.

I find that the landlord has served the Notice of Direct Request Proceeding to Tenant S.S. by leaving a copy with Tenant K.J., an adult who resides with Tenant S.S., and for this reason, I can only proceed with the portion of the landlord's monetary claim naming Tenant K.J. as a respondent.

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 tenants on July 14, 2020, indicating a monthly rent of \$2,500.00, due on the first day of each month for a tenancy commencing on August 1, 2020;
- A copy of a utility bill from the Capital Regional District for the rental unit dated September 10, 2020 for \$72.78;
- A copy of a demand letter from the landlord to the tenants, dated October 3, 2020, requesting payment of utilities in the amount of \$40.99;
- A copy of a witnessed Proof of Service Written Demand to Pay for Utilities form which indicates that the demand letter was personally served to the tenants at 9:45 am on October 3, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 3, 2020, for \$2,500.00 in unpaid rent and \$40.99 in unpaid utilities. 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 October 13, 2020;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the tenants at 9:45 am on October 3, 2020; and
- A Direct Request Worksheet and ledger showing the rent owing and paid during the relevant portion of this tenancy. The Direct Request Worksheet noted that, of

the \$2,500.00 rent identified as owing in the 10 Day Notice, \$1,000.00 was paid on October 16, 2020 and \$1,000.00 was paid on October 21, 2020.

Analysis

I have reviewed all documentary evidence and I find that the tenants were obligated to pay the monthly rent in the amount of \$2,500.00, as per the tenancy agreement.

In accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on October 3, 2020.

I accept the evidence before me that the tenants have 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 tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected date of the 10 Day Notice, October 13, 2020.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. I find that the date of the demand letter is the same day that the 10 Day Notice was issued to the tenants and that not enough time has passed to allow the landlord to treat the unpaid utilities as unpaid rent. For this reason, the monetary portion of the landlord's application concerning unpaid utilities is dismissed, with leave to reapply.

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 October 2020.

I note the landlord did submit a copy of another 10 Day Notice dated November 1, 2020; however, I find the landlord's Application for Dispute Resolution submitted November 3, 2020 is only in relation to the 10 Day Notice issued on October 3, 2020.

For this reason, I cannot hear the portion of the landlord's application for a monetary claim arising from rent owed for November 2020.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$500.00, the amount claimed by the landlord for unpaid rent owing for October 2020, as of the date of this application, November 3, 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(s). Should the tenant(s) 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 \$600.00 for rent owed for October 2020 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and Tenant K.J. must be served with **this Order** as soon as possible. Should Tenant K.J. 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 landlord's application for a Monetary Order for unpaid rent owing for October 2020, naming Tenant S.S. as a respondent, without leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid rent owing for November 2020 with leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid utilities 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: November 26, 2020

Residential Tenancy Branch