



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR-PP, 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 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 November 9, 2020, the landlords sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenants are deemed to have been served with the Direct Request Proceeding documents on November 14, 2020, the fifth day after their registered mailing.

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 the tenants, indicating a monthly rent of \$4,520.00, due on the fourth day of each month for a tenancy commencing on February 1, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the October 10 Day Notice) dated October 5, 2020, for \$3,170.00 in unpaid rent that was due October 4, 2020. The October 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 15, 2020;
- A copy of a Repayment Plan dated August 28, 2020 indicating the tenants would be responsible for repayment of affected rent in monthly installments of \$1,118.60 starting on October 4, 2020;
- A copy of an adjusted Repayment Plan dated October 5, 2020 indicating the tenants would be responsible for repayment of affected rent in monthly installments of \$1,345.00 starting on October 4, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Repayment 10 Day Notice) dated October 5, 2020, for \$1,345.00 for an unpaid affected rent repayment installment. The Repayment 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 15, 2020;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that both 10 Day Notices were posted to the tenants' door at 7:00 pm on October 5, 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 I find that the tenants were obligated to pay the monthly rent in the amount of \$4,520.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notices on October 8, 2020, three days after its posting.

Section 68 of the *Act* allows for the 10 Day Notices to be amended when it is reasonable to do so. I find that the addresses the tenants must vacate do not match with the tenants' addresses for service on the 10 Day Notices, the tenancy agreement, or any of the other documents submitted.

I further find that the tenants are not prejudiced by amending the vacate addresses as they are aware of their correct address as listed on the signed tenancy agreement. For this reason, I have amended the addresses on the 10 Day Notices from where the tenants must vacate to reflect the address on the tenancy agreement.

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 October 10 Day Notice within that five-day period.

Based on the foregoing, I find that the tenants are 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 October 10 Day Notice, October 18, 2020.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary award in the amount of \$3,170.00, the amount claimed by the landlords for unpaid rent owing for October 2020, as of the date of this application, November 5, 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 Notices only list amounts owing for October 2020 rent and for a repayment installment. For this reason, I can only hear these portions of the landlords' application for a monetary claim.

I find that amount owing on the Repayment 10 Day Notice does not match the amount of the installment for October 2020 listed on the initial Repayment Plan dated August 28, 2020.

I note that Policy Guideline #52 provides the following information pertaining to repayment plans:

"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..."

For example, if the landlord gave the tenant a repayment plan on August 22, 2020, the repayment period starts on that day. If the tenancy agreement stipulates that rent is due on the first of each month, the first installment payment would be due on October 1, 2020."

I find that the adjusted Repayment Plan was given to the tenants on October 5, 2020, after the date the first installment was due, October 4, 2020.

I find that the landlords did not provide the tenants the 30 days required in accordance with Policy Guideline #52 and the *C19 Act* prior to issuing the Repayment 10 Day Notice.

For this reason, I find I cannot consider the portion of the landlords' application for a Monetary Order for unpaid affected rent and utilities.

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 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 landlords a Monetary Order in the amount of \$3,270.00 for rent owed for October 2020 and for the recovery of the filing fee for this application. The landlords are provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(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 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: November 30, 2020

Residential Tenancy Branch