



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, OPUM-DR

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 a signed Proof of Service Notice of Direct Request Proceeding which declares that on October 21, 2020, the landlords personally served Tenant D.D. the Notice of Direct Request Proceeding. The landlords had a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlords and in accordance with section 89(1) of the *Act*, I find that Tenant D.D. has been duly served with the Direct Request Proceeding documents on October 21, 2020.

The landlords submitted a second signed Proof of Service Notice of Direct Request Proceeding which declares that on October 21, 2020, the landlords served Tenant H.D. the Notice of Direct Request Proceeding by handing the documents to Tenant D.D. The landlords had a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlords and in accordance with section 89(2) of the *Act*, I find that Tenant H.D. has been duly served with the Direct Request Proceeding documents on October 21, 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*?

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 one of the landlords and the tenants on March 22, 2020, indicating a monthly rent of \$1,400.00, due on the first day of each month for a tenancy commencing in March 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 13, 2020, for \$760.00 in unpaid rent and \$400.00 in unpaid security deposit. 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 4:00 pm on October 3, 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 \$1,400.00, 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.

Section 68 of the *Act* allows for the 10 Day Notice to be amended when it is reasonable to do so. I find that the date of the 10 Day Notice is for a date that had not occurred at the time that the 10 Day Notice was issued to the tenants. For this reason, I have amended the date of the 10 Day Notice to reflect the day it was witnessed being given to the tenants, October 03, 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 effective date of the 10 Day Notice, October 13, 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. For this reason, I cannot hear the portion of the landlords' application for a monetary claim arising from rent owed for October 2020.

I also note that the only monetary award available to a landlord by way of the Direct Request process is for unpaid rent and unpaid utilities. As the landlords have also sought a monetary award for matters relating to an unpaid security deposit in the amount of \$400.00, I would not be able to consider this aspect of the landlords' claim through the direct request process.

In this type of matter, the landlords must prove they served the tenants with the Notice of Direct Request Proceeding with all the required inclusions as indicated on the Notice as per section 89 of the *Act*.

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 landlords have served the Notice of Direct Request Proceeding to Tenant H.D. by leaving a copy with Tenant D.D., an adult who apparently resides with Tenant H.D., and for this reason, the portion of the landlord's application for a Monetary Order for unpaid rent owing for September 2020, naming Tenant H.D. as a respondent is dismissed without leave to reapply.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary award in the amount of \$760.00, the amount claimed by the landlords for unpaid rent owing for September 2020, as of the date of this application, October 13, 2020.

Conclusion

I grant an Order of Possession to the landlords 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 section 67 of the *Act*, I grant the landlords a Monetary Order in the amount of \$760.00 for rent owed for September 2020. The landlords are provided with this

Order in the above terms and Tenant D.D. must be served with **this Order** as soon as possible. Should Tenant D.D. 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 without leave to reapply.

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

I dismiss the landlords' application for a Monetary Order for an unpaid security deposit without 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 02, 2020

Residential Tenancy Branch