



Dispute Resolution Services

Page: 1

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 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 27, 2020, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on December 2, 2020, the fifth day after their registered mailing.

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 May 2, 2015, indicating a monthly rent of \$980.00, due on the first day of each month for a tenancy commencing on May 1, 2015;
- A copy of four Notice of Rent Increase forms showing the rent being increased from \$980.00 to the current monthly rent amount of \$1,113.00;
- A copy of a Repayment Plan dated August 20, 2020 indicating the tenant would be responsible for repayment of affected rent in monthly installments of \$419.10 starting on October 1, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated November 2, 2020, for \$1,113.00 in unpaid rent, \$982.20 in unpaid affected rent repayments, and \$318.71 in unpaid utilities. 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 November 15, 2020;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 10:00 am on November 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 I find that the tenant was obligated to pay the monthly rent in the amount of \$1,113.00, as per the tenancy agreement and the Notices of Rent Increase.

In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on November 5, 2020, three days after its posting.

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 section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, November 15, 2020.

Section 46(6) of the *Act* allows a landlord to treat unpaid utilities as unpaid rent if a tenancy agreement requires the tenant to pay utility charges **to the landlord**, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them.

I find that the landlord submitted a utilities acknowledgement letter indicating that the tenant was obligated to put utilities in their own name and that the tenancy agreement does not require the tenant is to pay the utilities to the landlord.

For this reason, the monetary portion of the landlord's application concerning unpaid utilities is dismissed, with leave to reapply.

I also note that the landlord has requested monetary compensation for two repayment installments in the amount of \$491.10 each, which is a partial amount of the affected rent.

I find that awarding only a portion of the affected rent may potentially affect the landlord's ability to recover the balance owing in a future dispute resolution proceeding.

For this reason, I exercise my discretion to not adjudicate the monetary claim relating to unpaid affected rent. The landlord has leave to reapply for a Monetary Order so that the entirety of the affected rent can be considered in a participatory hearing.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$1,113.00, the amount claimed by the landlord for unpaid rent owing for November 2020, as of the date of this application, November 17, 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. 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.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,213.00 for rent owed for November 2020 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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 landlord's application for a Monetary Order for unpaid affected rent and 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: December 15, 2020

Residential Tenancy Branch