



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DIRECT REQUEST DECISION

Dispute Codes 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 November 30, 2020, the Landlord sent the Tenants the Notice of Direct Request Proceeding and supporting documents 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 Tenants are deemed to have received these documents on December 5, 2020, the fifth day after their registered mailing.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. Is the Landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?
3. Is the Landlord entitled to recover the filing fee for the 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 one-year, fixed-term tenancy agreement signed by the Landlord and the Tenants on June 28, 2020, indicating a monthly rent of \$1,100.00, due on or before the first day of each month for a tenancy commencing on July 1, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated November 2, 2020, for \$670.00 in unpaid rent which amount includes a \$25.00 late payment fee. Proof of Service documents suggest the Landlord served the 10 Day Notice on the Tenants on November 2 (attached to the Tenants’ door) and November 4 (in person to K.G., witnessed). 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 November 16, 2020;
- A copy of a second 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Second 10 Day Notice”) dated November 13, 2020, for \$1,100.00 in unpaid rent. A copy of an invoice submitted by the Landlord indicates the Second 10 Day Notice was served on the Tenants on November 13, 2020 (signed by K.G.). The Second 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 November 23, 2020;
- A Direct Request Worksheet showing the amount of rent, late fee, and filing fee requested (\$770.00); and
- A type-written document dated November 21, 2020, explaining the recent history of the tenancy and the relationship between the parties.

Analysis

I have reviewed all documentary evidence and I find that the Tenants are obligated to pay the monthly rent in the amount of \$1,100.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the Tenants were served with and received the original 10 Day Notice on November 4, 2020, at which time it was served on K.G. in person. Service in this manner was witnessed by K.D.

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 sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, which fell on November 14, 2020. Therefore, I find that the Landlord is entitled to an order of possession which will be effective two days after it is served on the Tenants.

With respect to the Landlord's request for a monetary order for unpaid rent, I note the amount of rent claimed is different on each of the notices to end tenancy submitted. These discrepancies are further confused by the type-written document submitted by the Landlord which confirms further payments were received by the Landlord on November 18 and 19, 2020. It also appears the \$15.00 "late fee" claimed on the Direct Request Worksheet differs from what is provided for in the tenancy agreement. In light of these inconsistencies, I find I am not able to determine the precise amount of rent owing to date. For this reason, I find the Landlord's application for a monetary order for unpaid rent is dismissed with leave to reapply.

As the Landlord was partially successful, I find that the Landlord is entitled to recover the \$100.00 filing fee which I order may be retained from the security deposit held.

Conclusion

The Landlord is granted an order of possession which will be effective two days after service on the Tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply.

I order that the Landlord is entitled to recover the \$100.00 filing fee which I order may be retained from the security deposit held.

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 17, 2020

Residential Tenancy Branch