



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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 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 29, 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 December 4, 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 Tenant A.H. on January 3, 2019, indicating a monthly rent of \$3,400.00, due on the first 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 10 Day Notice) dated November 3, 2020, for \$10,200.00 in unpaid rent and \$1,720.30 in unpaid utilities. The 10 Day Notice provides that Tenant A.H. 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 30, 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 Tenant A.H. at 8:00 pm on November 3, 2020; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

Paragraph 12 (1) (b) of the Residential Tenancy Regulation establishes that a tenancy agreement is required to be “signed and dated by both the landlord and the tenant.”

I find that Tenant J.H. has not signed the tenancy agreement, which is a requirement of the direct request process. For this reason, I will only proceed with the portion of the landlords’ application naming Tenant A.H. as a respondent.

I have reviewed all documentary evidence and I find that Tenant A.H. was obligated to pay the monthly rent in the amount of \$3,400.00, as per the tenancy agreement.

In accordance with section 88 of the *Act*, I find that Tenant A.H. was duly served with the 10 Day Notice on November 3, 2020.

I accept the evidence before me that Tenant A.H. 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 Tenant A.H. 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 30, 2020.

Therefore, I find that the landlords are entitled to an Order of Possession for unpaid rent as of the date of this application, November 18, 2020.

On their Application for Dispute Resolution, the landlords have selected the option requesting compensation for unpaid rent and utilities. However, I find the landlords have not specified the dollar amount of compensation being requested.

For this reason, the landlords' application for a Monetary Order for unpaid rent and utilities is dismissed with leave to reapply.

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 landlords effective **two days after service of this Order** on Tenant A.H. Should Tenant A.H. and any other occupant 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 72 of the *Act*, I grant the landlords a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlords are provided with this Order in the above terms and Tenant A.H. must be served with **this Order** as soon as possible. Should Tenant A.H. 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 landlords' application for a Monetary Order for unpaid rent and 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 22, 2020

Residential Tenancy Branch