



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 December 17, 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 22, 2020, the fifth day after their registered mailing. Refusal or neglect to pick up the package does not override the deemed service provisions of the *Act*.

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 August 1, 2009, indicating a monthly rent of \$500.00, and \$50.00 for hydro due on the last day preceding the month to which the payment is to apply - by the 24th of each month.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated November 6, 2020, for \$300.00 in unpaid rent for October and \$300.00 in unpaid rent for November 2020. 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 19, 2020;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was served by registered mail on November 6, 2020, which was returned unclaimed a Canada post tracking number was provided. The witness also indicates a copy was also posted to the tenant's door on November 6, 2020.
- 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 \$500.00, plus \$50.00 for hydro as per the tenancy agreement. The rent increase was not provided as evidence for my review or consideration.

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 9, 2020, three days after its posting. The tenant was also served a copy by Registered mail, which was returned unclaimed. The

tenant is cautioned that refusal or neglect to pick up the Canada post tracking does not override the service provision of the Act.

Even though I do not have the rent increase before me, I am satisfied that the tenant was obligated to pay at least the amount of rent of \$500.00, and \$50.00 for hydro or dispute the notice to end tenancy. 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 sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, November 19, 2020. I find the tenancy legally ended on November 19, 2020. Therefore, I find that the landlord is entitled to an Order of Possession.

I am not satisfied that the landlord has provided sufficient evidence on the total amount of rent due. The landlord did not provide me with a copy of a rent increase showing rent was \$580.00 or any other agreement. Although I am satisfied that rent is owed, I find I cannot determine the amount of rent owed due to this discrepancy.

Therefore, I dismiss this portion of the landlord's claim with leave to reapply through the participatory hearing process. The landlord is entitled at that time to claim unpaid rent during the tenancy, as the repayment plan offered to the tenant for unpaid rent during the state of emergency would no longer apply.

As the landlord was 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(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 landlord a Monetary Order in the amount of \$100.00 to the recovery of the filing fee for this application from the tenant.

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 23, 2020

Residential Tenancy Branch