



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY 21 ENERGY REALTY and
[tenant name suppressed to protect privacy]

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 filed by the Landlord for an order of possession and a monetary order based on unpaid rent, and an order granting recovery of the filing fee.

The Landlord submitted a signed Proof of Service - Notice of Direct Request Proceeding which declares that on December 9, 2020, the Landlord served these documents on the Tenant by attaching a copy to the door of the Tenant’s rental unit.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding documents 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 attaching a copy to a door at the address at which the tenant resides when seeking a monetary order. However, section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be given to the tenant by attaching a copy to a door at the address at which the tenant resides when considering an order of possession for the landlord.

Based on the written submissions of the Landlord and in accordance with sections 89 and 90 of the *Act*, I find the Tenant is deemed to have received the Notice of Direct Request Proceeding documents on December 12, 2020, three days after they were posted to the Tenant’s door. However, as these documents were served on the Tenant in this manner, the Landlord’s application for unpaid rent is dismissed with leave to reapply. For the same reasons, the Landlord’s application to recover the filing fee is dismissed without leave to reapply. These aspects of the Landlord’s application have not been considered further in this decision.

Issue to be Decided

Is the Landlord entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 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 8, 2020, indicating a monthly rent of \$1,100.00, due on or before the first day of each month for a tenancy commencing on September 1, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 5, 2020 (the “10 Day Notice”), for \$2,803.00 in unpaid rent. 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 posted to the Tenant’s door on November 5, 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 \$1,100.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the Tenant was deemed to have received the 10 Day Notice on November 8, 2020, three days after it was posted to the Tenant’s door.

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 corrected effective date of the 10 Day Notice, November 18, 2020.

Therefore, I find the Landlord is entitled to an order of possession which will be effective two days after it is served on the Tenant.

Conclusion

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

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

The Landlord's application to recover the filing fee is dismissed 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: December 29, 2020

Residential Tenancy Branch