



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-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 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 10, 2020, the Landlord served the Tenant with the Notice of Direct Request Proceeding and supporting documents by registered mail. 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 the Tenant is deemed to have received these documents on December 15, 2020, five days after they were mailed.

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 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 signed by the Landlord and the Tenant indicating a month-to-month tenancy commencing on May 1, 2020 and rent in the amount of \$1,200.00 per month due on the first day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 3, 2020 (the “10 Day Notice”), indicating \$2,100.00 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 13, 2020;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was served on the Tenant by registered mail at 3:39 p.m. on November 4, 2020. The Landlord provided a copy of the Canada Post customer receipt containing the Tracking Number to confirm this mailing.
- A Direct Request Worksheet and supporting document 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 rent in the amount of \$1,200.00 per month, 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 9, 2020, five days after it was sent to the Tenant by registered mail.

I accept the evidence before me that the Tenant 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 19, 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.

As the Landlord is successful, I find they are entitled to a monetary award in the amount of \$100.00 in recovery of the filing fee paid to make the Application.

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 in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$100.00 for the recovery of the filing fee. The monetary order must be served on the Tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 30, 2020

Residential Tenancy Branch