



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

The Landlords submitted a signed Proof of Service - Notice of Direct Request Proceeding which declares that on December 10, 2020, the Landlords served these documents on the Tenants by registered mail. The Landlords provided a copy of the Canada Post receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the Landlords and in accordance with sections 89 and 90 of the *Act*, I find the Tenants are deemed to have received these documents on December 15, 2020, five days after they were mailed.

Issues to be Decided

1. Are the Landlords entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. Are the Landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?
3. 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 the Tenant K.H.R. on July 5, 2020, indicating a monthly rent of \$1,095.00, due on the first day of each month for a tenancy commencing on July 6, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2020 (the “10 Day Notice”), for \$1,095.00 in unpaid rent. 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 12, 2020;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was served on the Tenants by giving a copy to the Tenant D.R.M. in person at 12:30 p.m. on November 2, 2020; and
- A Monetary Order Worksheet describing leak repair costs of \$156.00.

Analysis

I have reviewed all documentary evidence and I find that the Tenants are obligated to pay the monthly rent in the amount of \$1,095.00, 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 10 Day Notice on November 2, 2020, the day it was given to the Tenant D.R.M. in person.

I accept the evidence before me that the Tenants failed to pay the rent owed in full or dispute the 10 Day Notice within the five-day period set out under section 46(4) of the *Act*.

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, November 12, 2020. As a result, I find the Landlords are entitled to an order of possession for unpaid rent which will be effective two days after it is served on the Tenants.

With respect to the Landlords' claim for unpaid rent, section 59 of the *Act* establishes that an Application for Dispute Resolution must "include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings."

Further, Policy Guideline #39 provides the following information:

When making an application for dispute resolution through the direct request process, the landlord must provide copies of:

- *the written tenancy agreement;*
- *documents showing changes to the tenancy agreement or tenancy, such as rent increases, or changes to parties or their agents;*
- *the Direct Request Worksheet (form RTB-46) setting out the amount of rent or utilities owing which may be accompanied by supporting documents such as a rent ledger or receipt book;*
- *the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (this is often considered proof that the tenant did not pay rent); and,*
- *proof that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and, if applicable, the Written Demand to Pay Utilities.*

[Reproduced as written.]

The language in Policy Guideline #39 is mandatory.

In this case, the 10 Day Notice was issued in relation to rent due on November 1, 2020. Although the Landlords claimed rent due on November 1 and December 1, 2020, they did not provide a Direct Request Worksheet that set out the rent owing. Rather, the Landlords submitted a Monetary Order Worksheet which described a leak repair cost of \$156.00. As the Landlords have not submitted a Direct Request Worksheet, I find I am unable to consider their request for unpaid rent. Therefore, the Landlords' request for a monetary order for unpaid rent is dismissed with leave to reapply.

As the Landlords have been partially 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 Landlords are granted an order of possession which will be effective two days after it is served on the Tenants. The order of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of \$100.00 in recovery of the filing fee. The monetary order must be served on the Tenants. 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 31, 2020

Residential Tenancy Branch