



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

The Landlord submitted signed Proof of Service - Notice of Direct Request Proceeding documents which declare that on December 11, 2020, the Landlord served each of the Tenants with the Notice of Direct Request Proceeding documents in person. The Tenants’ signatures on the Proof of Service documents confirm receipt. I find the Tenants were served with and received these documents on December 11, 2020.

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 monetary compensation for unpaid rent pursuant to section 67 of the *Act*?
3. 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 Tenants on April 10, 2018, indicating a monthly rent of \$1,500.00, due on the first day of each month, for a tenancy commencing on May 1, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 12, 2020 (the "10 Day Notice"), for \$1,500.00 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 22, 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 Tenant M.H. in person on November 12, 2020; and
- 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 Tenants were obligated to pay the monthly rent in the amount of \$1,500.00, 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 12, 2020, the day it was served on the Tenants in person.

I accept the evidence before me that the Tenants 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 Tenants are conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on November 22, 2020, the effective date of the 10 Day Notice. Therefore, I find the Landlord is 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 Landlord's request for a monetary order for unpaid rent, the onus is on the Landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

With respect to the Landlord's request for a monetary order for unpaid rent, I find that the monthly breakdown of rent owing on the Direct Request Worksheet does not match with the monetary amount indicated on the 10 Day Notice. The 10 Day Notice indicates the amount of rent due as of November 12, 2020, the date it was served on the Tenants, was \$1,500.00. However, the Direct Request Worksheet (and the Landlord's application) sets out amounts owed on September 1 (\$500.00), October 1 (\$1,500.00), and November 1, 2020 (\$1,500.00), more than what was indicated on the 10 Day Notice the Tenants received. As a result of this ambiguity, I order that the Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply.

As the Landlord is 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 Landlord is 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 Landlord is granted a monetary order in the amount of \$100.00 in recovery of the filing fee for this application. 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: January 4, 2021

Residential Tenancy Branch