



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 an order granting recovery of the filing fee.

The Landlord submitted signed Proof of Service Notice of Direct Request Proceeding documents which declare that the Tenants were each served with the Notice of Direct Request Proceeding and supporting documents by registered mail on December 16, 2020. The Landlord provided copies of Canada Post receipts 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 Tenants are deemed to have received these documents on December 21, 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 which was signed by the Landlord and the Tenants on April 1, 2020, indicating a monthly rent of \$1,300.00, due on the first day of each month, for a fixed-term tenancy commencing on April 1, 2020 and ending on March 31, 2021;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 19, 2020 (the “10 Day Notice”), for \$3,880.00 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 30, 2020;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was served on the Tenants by attaching a copy to the door or other conspicuous place on November 19, 2020, and that service in this manner was witnessed by S.D.; 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 rent in the amount of \$1,300.00 per month, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the Tenants are deemed to have received the 10 Day Notice on November 22, 2020, three days after it was posted to the Tenants’ door or other conspicuous place.

I accept the evidence before me that the Tenants have 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 the corrected effective date of the 10 Day Notice, which is December 2, 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 Tenants.

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 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. 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: January 5, 2021

Residential Tenancy Branch