



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, 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 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 document which declares that the Landlord served the Tenant with the Notice of Direct Request Proceeding and supporting documents by attaching a copy to the door or other conspicuous place on December 18, 2020, which service was witnessed by J.D. Based on the written submissions and evidence 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 21, 2020, three days after they were attached to the door or other conspicuous place.

However, in this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding with all the required inclusions as indicated on the Notice 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 served on a tenant by attaching a copy to a door or other conspicuous place at the address at which the tenant resides when seeking a monetary order.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be served on a tenant by attaching a copy to a door or other conspicuous place at the address at which the tenant resides when considering an order of possession for the landlord.

I find that the Landlord served the Notice of Direct Request Proceeding documents by attaching a copy to the door or other conspicuous place at the address at which the tenant resides. For this reason, I order that the monetary portion of the Landlord's application for unpaid rent is dismissed with leave to reapply.

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 Tenant on June 10, 2019, indicating a monthly rent of \$900.00, due on the first day of each month, for a tenancy commencing on July 1, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 6, 2020 (the "First 10 Day Notice"), for \$900.00 in unpaid rent. The First 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 September 21, 2020;
- A copy of a Proof of Service - Notice to End Tenancy form which indicates that the First 10 Day Notice was served on the Tenant in person on September 6, 2020, which service was witnessed by N.O. I note the Proof of Service - Notice to End Tenancy document indicates the Tenant scrawled profanities on it.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 6, 2020 (the “Second 10 Day Notice”), for \$1,800.00 in unpaid rent. The Second 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 October 19, 2020;
- A copy of a Proof of Service - Notice to End Tenancy form which indicates that the Second 10 Day Notice was served on the Tenant by attaching a copy to the door or other conspicuous place on October 6, 2020, which service was witnessed by N.O. I note the Proof of Service - Notice to End Tenancy document indicates it was served in this manner because the Tenant told the Landlord to “F--- OFF” through the door;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 5, 2020 (the “Third 10 Day Notice”), for \$2,700.00 in unpaid rent. The Third 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 17, 2020;
- A copy of a Proof of Service - Notice to End Tenancy form which indicates that the Third 10 Day Notice was served on the Tenant in person on November 5, 2020, which service was witnessed by N.O. I note the Proof of Service - Notice to End Tenancy document indicates the Tenant wrote on the document while screaming; and
- A copy of a Direct Request Worksheet describing unpaid rent due on September 1, October 1, November 1, and December 1, 2020.

Analysis

I have reviewed all documentary evidence and I find that the Tenant is obligated to pay the monthly rent in the amount of \$900.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the Tenant is deemed to have received the Third 10 Day Notice on November 5, 2020, at which time it was served on the Tenant in person. I am satisfied that the words “bullshit” and “asshole” were written by the Tenant on the Proof of Service document when she was being served with the Third 10 Day Notice.

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 November 15, 2020, the corrected effective date of the Third 10 Day Notice.

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 also 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's request for a monetary order for unpaid rent is dismissed with leave to reapply.

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 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 12, 2021

Residential Tenancy Branch