



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, 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 filed 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 document which declares that the Landlords served the Tenant with the Notice of Direct Request Proceeding and supporting documents by registered mail on December 30, 2020. The Landlords provided copies of the Canada Post customer 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 Tenant is deemed to have received these documents on January 4, 2021, 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 Landlord B.C. and the Tenant on June 16, 2018, indicating a monthly rent of \$3,000.00 due on the first day of each month, for a tenancy commencing on July 1, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 7, 2020 (the “10 Day Notice”), for \$3,000.00 in unpaid rent, less an amount attributable to a “basement tenant” ($\$3,000.00 - \$1,250.00 = \$1,750.00$). 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 December 31, 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 attaching a copy to the door of the Tenant’s residence on December 7, 2020, which service was witnessed by M.C.; and
- A copy of a Direct Request Worksheet and supporting document showing the rent owing in the amount of \$1,750.00.

Analysis

I have reviewed all documentary evidence and I find that the Tenant was obligated to pay rent in the amount of \$3,000.00 per month on the first day of each month, 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 10 Day Notice on December 10, 2020, three days after it was posed to the door of the Tenant’s residence.

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 December 20, 2020, the corrected effective date of the 10 Day Notice.

Therefore, I find the Landlords are entitled to an order of possession which will be effective two days after it is served on the Tenant.

With respect to the Landlords' request for a monetary order for unpaid rent, the onus is on the Landlords 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 Landlords 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.

As noted above, the tenancy agreement indicates that rent in the amount of \$3,000.00 per month is due on the first day of each month. However, while the application indicates the Tenant resides in the "upper" unit, the 10 Day Notice appears to suggest that a "basement tenant" resides in a different unit and contributes \$1,250.00 toward total rent of \$3,000.00. Although I make no finding in this regard, the discrepancy gives rise to an issue that needs clarification beyond the purview of a Direct Request Proceeding. As a result, I find that the Landlords' application for a monetary order for unpaid rent is dismissed with leave to reapply.

As the Landlords are 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 Tenant. 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 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 18, 2021

Residential Tenancy Branch