



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 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 registered mail on December 31, 2020. The Landlord provided copies of the 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 January 5, 2021, 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 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 Tenant on April 8, 2020, indicating a monthly rent of \$2,390.00, due on the 20th day of each month for a tenancy commencing on April 20, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 4, 2020 (the “10 Day Notice”), for \$3,170.00 (\$2,390.00 + \$780.00) 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 December 14, 2020;
- A photograph of documents attached to the door of the Tenant’s rental unit;
- A copy of a text message dated December 8, 2020 acknowledging receipt of a notice on December 7, 2020;
- A copy of a Direct Request Worksheet showing the rent owing at the time the 10 Day Notice was issued and payment of \$1,000.00 after the 10 Day Notice was issued.

Analysis

I have reviewed all documentary evidence and I find that the Tenant was obligated to pay the monthly rent in the amount of \$2,390.00, as per the tenancy agreement.

Although proof of service of the 10 Day Notice was not provided in compliance with Policy Guideline #39, I find, based on the Tenant’s text message acknowledging receipt, that the Tenant received the 10 Day Notice on December 7, 2020.

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 17, 2020, the corrected effective date of the 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.

With respect to the Landlord's request for a monetary order for unpaid rent, a landlord cannot pursue rent owed for an amount beyond the amount noted on the 10 Day Notice. I find the 10 Day Notice only lists amounts owing for October 20 and November 20, 2020. For this reason, I cannot hear the portion of the Landlord's application for a monetary claim arising from rent due on December 20, 2020 or later. Further, the Direct Request Worksheet indicates that a payment of \$1,000.00 was received after the 10 Day Notice was issued. As a result, I find the Landlord is entitled a monetary award in the amount of \$2,170.00 for unpaid rent (\$3,170.00 - \$1,000.00). The Landlord remains at liberty to reapply for additional rent due or other relief to which he may be entitled at the Landlord's discretion.

As the Landlord is successful, I find the Landlord is 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 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 \$2,270.00 for rent due on October 20 and November 20, 2020, and for the 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 19, 2021

Residential Tenancy Branch