



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR-PP, OPUM-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 a Monetary Order.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on January 6, 2021, the landlord sent Tenant K.P. the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt 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 that Tenant K.P. is deemed to have been served with the Direct Request Proceeding documents on January 11, 2022, the fifth day after their registered mailing.

In this type of matter, the landlord must prove they served the tenants with the Notice of Direct Request Proceeding with all the required inclusions as indicated on the Notice as per section 89 of the *Act*. Policy Guideline #39 on Direct Requests provides the following requirements:

“After the Notice of Dispute Resolution Proceeding Package has been served to the tenant(s), the landlord must complete and submit to the Residential Tenancy Branch a Proof of Service Notice of Direct Request Proceeding (form RTB-44) for each tenant served.”

I note that the landlord submitted a copy of a Canada Post Customer Receipt containing a Tracking Number to confirm a package was sent to Tenant D.K. on January 6, 2021. However, the landlord has not provided a copy of the Proof of Service of the Notice of Direct Request Proceeding form which is a requirement of the Direct Request process as detailed in Policy Guideline #39.

For this reason, I will only proceed with the portion of the landlord's application naming Tenant K.P. as a respondent.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

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 March 22, 2020, indicating a monthly rent of \$2,000.00, due on the fifteenth day of each month for a tenancy commencing on March 15, 2020;
- A copy of two utility bills from Fortis BC for the rental unit dated October 22, 2020 for \$109.03 and November 24, 2020 for \$120.70;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated December 16, 2020, for \$5,100.00 in unpaid rent and \$229.73 in unpaid utilities. 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 26, 2020;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants' door at 1:05 pm on December 16, 2020; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy. The Direct Request Worksheet noted that, of the \$5,100.00 identified as owing in the 10 Day Notice, \$900.00 was paid on December 21, 2020, \$1,000.00 was paid on December 22, 2020, and \$100.00 was paid on December 23, 2020.

Analysis

I have reviewed all documentary evidence and I find that Tenant K.P. was obligated to pay the monthly rent in the amount of \$2,000.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that Tenant K.P. was deemed served with the 10 Day Notice on December 19, 2020, three days after its posting.

I accept the evidence before me that Tenant K.P. 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 Tenant K.P. is 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, December 29, 2020.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. I find that there is no written demand in the landlord's evidence submissions which would allow the landlord to treat the utilities as unpaid rent.

For this reason, the monetary portion of the landlord's application concerning unpaid utilities is dismissed, with leave to reapply.

Policy Guideline #52 provides the following information pertaining to the *COVID-19 Related Measures Act (the C-19 Act)*:

"A landlord cannot pursue an eviction for unpaid affected rent unless they have already given a valid repayment plan or there is a valid prior agreement still in effect."

The landlord has indicated that the 10 Day Notice includes \$1,100.00 owing from the repayment plan. However, I find the landlord has not submitted a copy of a repayment plan or a valid prior agreement to demonstrate that they had the authority to issue a 10 Day Notice for the affected rent.

For this reason, the monetary portion of the landlord's application concerning unpaid affected rent is dismissed with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$2,000.00, the amount claimed by the landlord for unpaid rent owing for December 2020, as of the date of this application, December 29, 2020.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on Tenant K.P. Should Tenant K.P. and any other occupant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2,100.00 for rent owed for December 2020 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and Tenant K.P. must be served with **this Order** as soon as possible. Should Tenant K.P. fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the portion of the landlord's application for a Monetary Order for unpaid rent owing for December, naming Tenant D.K. as a respondent, without leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid affected rent and unpaid utilities with leave to reapply.

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 25, 2021

Residential Tenancy Branch