



Dispute Resolution Services

Page: 1

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 signed Proof of Service - Notice of Direct Request Proceeding documents which declare that the Landlord served each of the Tenants with the Notice of Direct Request Proceeding and supporting documents by registered mail January 22, 2021. Copies of Canada Post receipts which included the Tracking Number were submitted in support. Based on the written submissions and evidence 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 27, 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 Tenants on February 21, 2020, indicating a monthly rent in the amount of \$1,750.00 due on the first day of each month, for a tenancy commencing on March 1, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 5, 2021 for \$2,050.00 in unpaid rent (the “10 Day Notice”). 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 January 15, 2021;
- A copy of a signed Proof of Service - Notice to End Tenancy form which indicates that the 10 Day Notice was served on the Tenants by registered mail on January 5, 2021, which service was supported by copies of Canada Post receipts with a Tracking Number;
- A copy of a Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of a text message dated September 5, 2020 describing a repayment plan involving ten monthly payments of \$90.00 commencing October 1, 2020.

Analysis

I have reviewed all documentary evidence and I find that at all material times the Tenants were obligated to pay the monthly rent in the amount of \$1,750.00, plus a \$90.00 repayment amount.

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 January 10, 2021, five days after it was mailed.

I accept the evidence before me that the Tenants failed to pay the rent owed in full within the five days after receipt of the 10 Day Notice 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 January 20, 2021, 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 Tenants.

With respect to the Landlord's claim for unpaid rent, I note that the amount of rent on the tenancy agreement (\$1,750.00 per month) does not match the amount of rent being claimed on the Direct Request Worksheet (\$1,775.00 per month). Further, it is unclear how the repayment amount of \$90.00 factors into the amount claimed as indicated on the 10 Day Notice.

I find I am not able to determine the precise amount of rent owing and for this reason the Landlord's application for a monetary order for unpaid rent is dismissed with leave to reapply.

As the Landlord has been partially 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 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's request for a monetary order for unpaid rent is dismissed with leave to reapply.

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 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: February 10, 2021

Residential Tenancy Branch