



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON GROUP WESTCOAST
REALTY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR-PP, 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 on January 13, 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 18, 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 June 20, 2018, indicating a monthly rent in the amount of \$2,400.00 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 19, 2020 for \$4,400.00 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 1, 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 attaching a copy to the Tenant's door or other conspicuous place on December 19, 2020, which service was witnessed by M.N.;
- A copy of a Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy;
- A copy of a Repayment Plan confirming monthly installment payments in the amount of \$490.00 commencing on February 1, 2021 and ending on November 1, 2021; and
- A copy of a Statement for the period from June 18, 2018 to January 1, 2021.

Analysis

I have reviewed all documentary evidence and I find that the Tenants were obligated to pay the monthly rent in the amount of \$2,400.00.

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 December 22, 2020, three days after it was attached to the Tenant's door or other conspicuous place.

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 1, 2021, the 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.

I also find the Landlord has demonstrated an entitlement to a monetary award in the amount of \$4,400.00 for unpaid rent. Claims are limited to what is indicated in the 10 Day Notice. Therefore, this application is limited to the amount indicated on the 10 Day Notice and described on the Direct Request Worksheet. However, the Landlord remains at liberty to apply for an order for any additional unpaid rent due.

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 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 is granted a monetary order in the amount of \$4,500.00 for unpaid rent and 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