



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 Tenants with the Notice of Dispute Resolution Proceeding and supporting documents by email on March 6, 2021, in accordance with an order for substituted service issued on February 26, 2021. Pursuant to section 89 and 90 of the *Act*, I find these documents are deemed to have been received by the Tenants on March 9, 2021, three days after they were sent by email.

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 Landlords and the Tenants on January 26, 2020, indicating a monthly rent in the amount of \$2,800.00 due on the 20th day of each month, for a tenancy commencing on February 1, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 28, 2021 for \$8,400.00 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 February 11, 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 Tenants’ door on January 28, 2021, which service was witnessed by K.S.; and
- Copies of bank statements and email correspondence.

Analysis

I have reviewed all documentary evidence and I find that the Tenants were obligated to pay monthly rent in the amount of \$2,800.00.

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 January 31, 2021, three days after it was attached to the Tenants’ door.

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 February 10, 2021, 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 Tenants.

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.

Policy Guideline #39 provides direction to landlords making an application for dispute resolution by Direct Request. It confirms that landlords must provide a number of documents including a "Direct Request Worksheet (form RTB-46) setting out the amount of rent or utilities owing which may be accompanied by supporting documents such as a rent ledger or receipt book". The language in Policy Guideline #39 is mandatory.

The Landlords have not submitted a Direct Request Worksheet as required under Policy Guideline #39. Therefore, I find I am unable to determine how the amount of rent indicated on the 10 Day Notice was determined. As a result, I order that the Landlords' request 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 Tenants. The order of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

The Landlords' request for a monetary order for unpaid rent is dismissed with leave to reapply.

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 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: March 19, 2021

Residential Tenancy Branch