



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 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 February 12, 2021, the landlord personally served Tenant H.D. the Notice of Direct Request Proceeding. The landlord had a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm personal service. Based on the written submissions of the landlord and in accordance with section 89(1) of the *Act*, I find that Tenant H.D. has been duly served with the Direct Request Proceeding documents on February 12, 2021.

The landlord submitted a second signed Proof of Service Notice of Direct Request Proceeding which declares that on February 12, 2021, the landlord served Tenant M.B. the Notice of Direct Request Proceeding by handing the documents to Tenant H.D. The landlord had a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm this service. Based on the written submissions of the landlord and in accordance with section 89(2) of the *Act*, I find that Tenant M.B. has been duly served with the Direct Request Proceeding documents on February 12, 2021.

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, indicating a monthly rent of \$1,250.00, due on the fifteenth day of each month for a tenancy commencing on February 15, 2020
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 16, 2021, for \$3,750.00 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 January 31, 2021
- 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 5:50 pm on January 16, 2021
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

Analysis

I have reviewed all documentary evidence and I find that the tenants were obligated to pay the monthly rent in the amount of \$1,250.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on January 19, 2021, three days after its posting.

I accept the evidence before me that the tenants have 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 tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, January 31, 2021.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$3,750.00, the amount claimed by the landlord for unpaid rent owing for November 2020, December 2020, and January 2021, as of the date of this application, February 2, 2021.

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*.

Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be given to the tenant by leaving a copy with an adult who resides with the tenant.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be given to the tenant by leaving a copy with an adult who resides with the tenant, only when considering an Order of Possession for the landlord.

I find that the landlord has served the Notice of Direct Request Proceeding to Tenant M.B. by leaving a copy with Tenant H.D., an adult who resides with Tenant M.B., and for this reason, the monetary portion of the landlord's application naming Tenant M.B. as a respondent is dismissed without leave to reapply.

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 the tenant(s). Should the tenant(s) 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 \$3,850.00 for rent owed for November 2020, December 2020, and January 2021 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and Tenant H.D. must be served with **this Order** as soon as possible. Should Tenant H.D. 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 naming Tenant M.B. as a respondent without 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: March 02, 2021

Residential Tenancy Branch