



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 two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on February 19, 2021, the landlord personally served each of the tenants the Notice of Direct Request Proceeding. The landlord had the tenants and a witness sign the Proof of Service Notice of Direct Request Proceeding forms to confirm personal service. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on February 19, 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

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 October 1, 2020, indicating a monthly rent of \$1,100.00, due on the

thirtieth or thirty-first day of each month for a tenancy commencing on October 1, 2020

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 2, 2021, for \$2,200.00 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 February 12, 2021
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the tenants at 10:30 am on February 2, 2021
- A Direct Request Worksheet

Analysis

I have reviewed all documentary evidence and I find that the tenants were obligated to pay the monthly rent in the amount of \$1,100.00, as per the tenancy agreement.

In accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on February 2, 2021.

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, February 12, 2021.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of the date of this application, February 9, 2021.

I note that the amount of rent on the tenancy agreement (\$1,100.00) does not match the amount of rent being claimed on the 10 Day Notice (\$2,200.00). The Direct Request Worksheet must clearly show any additional months for which the tenant owes rent to substantiate the claim.

I find I am not able to determine the precise months 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 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 section 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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 landlord's application for a Monetary Order for unpaid rent 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: March 05, 2021

Residential Tenancy Branch