



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 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 February 25, 2021. The Landlord submitted Canada Post Customer Receipts which included Tracking Numbers 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 of March 2, 2021, five days after they were mailed.

Preliminary and Procedural Matters

The tenancy agreement submitted into evidence is only signed by the Tenant K.L.S. Paragraph 12(1)(b) of the Residential Tenancy Regulation establishes that a tenancy agreement is required to be “signed and dated by both the landlord and the tenant.”

I find the Tenant S.W.S. has not signed the tenancy agreement, which is a requirement of the Direct Request process. As the Tenant S.W.S. is not a party to the tenancy agreement, I find it is appropriate to amend the application pursuant to section 64(3) of the *Act* and remove the Tenant S.W.S. as a party. However, I have continued to refer to the Tenants in the plural throughout this decision.

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 Tenant K.L.S. on November 16, 2018, indicating a monthly rent in the amount of \$3,500.00 due on the first day of each month, for a tenancy commencing on December 1, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 6, 2021 for \$3,500.00 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 18, 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 leaving a copy attached to the Tenant’s door or other conspicuous place on February 6, 2021, which service was witnessed by X.M.; and
- A copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

Analysis

I have reviewed all documentary evidence and I find that the Tenants were obligated to pay the monthly rent in the amount of \$3,500.00.

In accordance with sections 88 and 90 of the *Act*, I find that the Tenants were served with and received the 10 Day Notice on February 9, 2021, three days after it was attached to the Tenants' 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 February 19, 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.

I also find the Landlord has demonstrated an entitlement to a monetary award in the amount of \$3,500.00 for unpaid rent. Claims under the Direct Request Process are limited to what is indicated on the 10 Day Notice. The Landlord remains at liberty to reapply for a monetary 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 Tenant K.L.S. The order of possession is effective with respect to all occupants of the rental unit. 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 \$3,600.00 for unpaid rent and in recovery of the filing fee for this application. The monetary order must be served on the Tenant. 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 11, 2021

Residential Tenancy Branch