



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, OPUM-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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted a signed Proof of Service Notice of Direct Request Proceeding form which declares that on February 19, 2021, the landlords personally served the tenant the Notice of Direct Request Proceeding. The landlords had a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm personal service.

The landlords submitted a second signed Proof of Service Notice of Direct Request Proceeding form which declares that on February 23, 2021, the landlords served the tenant the Notice of Direct Request Proceeding by handing the documents to the tenant's roommate. The landlords had the roommate and a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm this service.

The landlords have also submitted a copy of a Canada Post Customer Receipt containing the tracking number to confirm the Notice of Direct Request Proceeding was also sent to the tenant by registered mail on February 24, 2021.

Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on March 1, 2021, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by one of the landlords and the tenant on November 12, 2020, indicating a monthly rent of \$2,500.00, due on the first day of each month for a tenancy commencing on December 1, 2020
- A copy of rent decrease agreement which was signed by one of the landlords and the tenant, indicating the rent would be decreased to \$2,300.00 from December 2020 to February 2021
- A copy of a utility bill from Fortis for the rental unit dated January 28, 2021 for \$477.49, on which the landlord has indicated the tenant is responsible for \$238.75
- A copy of a utility bill from BC Hydro for the rental unit dated January 21, 2021 for \$343.70, on which the landlord has indicated the tenant is responsible for \$171.85
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 2, 2021, for \$2,300.00 in unpaid rent and \$172.00 in unpaid utilities. The 10 Day Notice provides that the tenant 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 tenant at 9:45 (am or pm not indicated) on February 2, 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 in accordance with section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on February 2, 2021.

I accept the evidence before me that the tenant has 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 tenant is 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 17, 2021.

I find that the monthly rent owing on the Direct Request Worksheet (\$2,500.00) does not match the monetary amount listed on the 10 Day Notice and the amount requested by the landlords (\$2,300.00). For this reason, the landlords' application for a Monetary Order for unpaid rent is dismissed, with leave to reapply.

Section 46 (6) of the *Act* allows the landlords to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. I find that the dates of the utility bills are less than 30 days from the time that the 10 Day Notice was issued to the tenant and that not enough time has passed to allow the landlords to treat the unpaid utilities as unpaid rent. For this reason, the monetary portion of the landlords' application concerning unpaid utilities is dismissed, with leave to reapply.

As the landlords were partially successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. Should the tenant 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 landlords a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlords are provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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 landlords' application for a Monetary Order for unpaid rent and utilities 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 16, 2021

Residential Tenancy Branch