



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 a Notice of Dispute Resolution Proceeding and supporting documents by registered mail on March 24, 2021. Service of these documents in this manner was supported by Canada Post tracking information printouts that included tracking numbers. Pursuant to sections 89 and 90 of the *Act*, I find these documents are deemed to have been received by the Tenants on March 29, 2021, five days after they were mailed.

Preliminary and Procedural Issue

The Landlord has named Estate of P.T. as a party to this proceeding. However, on examination of the documents submitted by the Landlord, I note that P.T. did not sign and was not a party to the tenancy agreement.

In addition, I note that Policy Guideline #43 provides direction for naming a deceased party in a dispute resolution proceeding:

Where a party to an Application for Dispute Resolution is deceased, the personal representative of the deceased’s estate must be named. If the deceased is a respondent to an application, the personal representative must be named and served. If the applicant does not know the name of the deceased’s personal representative at the time of filing an Application

for Dispute Resolution, the deceased's name can be filled in on the application (e.g. John Doe, deceased). At the hearing, the arbitrator may amend the application to reflect the proper name of the estate.

The personal representative may be the person named as executor in the deceased's will, or the person who has been approved by the court to administer the estate by way of an estate grant.

The proper manner of naming the estate is as follows: John Smith, Personal Representative of the Estate of Mary Jones, Deceased.

[Reproduced as written.]

Even if P.T. was a party to the tenancy agreement, I find that the name provided for the Estate does not comply with Policy Guideline #43 and that insufficient evidence has been submitted to enable me to amend the application.

Considering the above, I find it appropriate in the circumstances to remove Estate of P.T. as a party, pursuant to section 64 of the *Act*. The Tenants L.T. and E.T. are referred to as the Tenants 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 Tenants on October 23, 2017, indicating a monthly rent in the amount of \$1,850.00 due on the first day of each month, for a tenancy commencing on November 1, 2017;
- A copy of a Notice of Rent Increase dated August 10, 2019 increasing rent from \$1,850.00 to \$1,875.00, effective December 1, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 2, 2021 for \$5,100.00 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 March 15, 2021;
- Copies of signed Proof of Service Notice to End Tenancy forms which indicate that the 10 Day Notice was served on the Tenants in person on March 2, 2021;
- A copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period; and
- Copies of various correspondence between the parties and legal counsel for the Landlord.

Analysis

I have reviewed all documentary evidence and I find that the Tenants were obligated to pay monthly rent in the amount of \$1,875.00.

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 March 2, 2021, the day it was given to them in person.

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 March 12, 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 \$5,100.00 for unpaid rent. Claims are limited to what is indicated in the 10 Day Notice. The Landlord remains at liberty to reapply for a monetary order for any additional unpaid rent or other losses.

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 Tenants. The order of possession must be served on the Tenants. 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 \$5,200.00 for unpaid rent and 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: April 13, 2021

Residential Tenancy Branch