



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 attaching copies to the Tenants’ door or other noticeable place on March 25, 2021. Service of these documents in this manner was witnessed by H.P. who provided a signature as confirmation. Pursuant to sections 89 and 90 of the *Act*, I find these documents are deemed to have been received by the Tenants on March 28, 2021, three days after they were attached to the Tenants’ door or other noticeable place.

However, in this type of matter, the Landlord must prove they served the Tenants with the Notice of Dispute Resolution Proceeding with all the required inclusions as per section 89 of the *Act*.

Section 89 of the *Act* confirms that a landlord's application for dispute resolution may be served on a tenant by attaching a copy to a door or other conspicuous place at the address at which the tenant resides only when seeking an order of possession. An application for dispute resolution cannot be served in this manner when seeking monetary relief.

In this case, I find that the Landlord has served the Notice of Dispute Resolution Proceeding on the Tenants by attaching a copy to the door or other noticeable place. For this reason, and in accordance with section 89(1) of the *Act*, I find that the monetary portion of the Landlord's application for unpaid rent is dismissed with leave to reapply. It has not been considered further in 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 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 parties, indicating a monthly rent in the amount of \$800.00 due on the first day of each month, for a tenancy commencing on January 13, 2021;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 7, 2021 for \$800.00 in unpaid rent due on March 1, 2021 (the "10 Day Notice");
- 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 attaching a copy to the door or other conspicuous place on March 8, 2021, which service was witnessed by I.N.; 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 monthly rent in the amount of \$800.00.

In accordance with sections 88 and 90 of the *Act*, I find that the Tenants are deemed to have received the 10 Day Notice on March 11, 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 March 21, 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.

As the Landlord is partially 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 \$100.00 in recovery of the filing fee paid to make 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 14, 2021

Residential Tenancy Branch