



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR

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 a signed Proof of Service Notice of Direct Request Proceeding which declares that on March 31, 2021, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing. Based on the written submissions of the landlord 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 April 5, 2021, the fifth day after their registered mailing.

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*?

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 on December 23, 2020, indicating a monthly rent of \$2,800.00, due on the first day of each month for a tenancy commencing on January 1, 2021

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 20, 2021, for \$2,800.00 in unpaid rent. 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 March 30, 2021
- A copy of an e-mail sent from the landlord to the tenant on March 20, 2021, containing the 10 Day Notice as an attachment
- A copy of a text message from the tenant to the landlord dated March 21, 2021 acknowledging the 10 Day Notice was sent by e-mail
- 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 I find that the tenant was obligated to pay the monthly rent in the amount of \$2,800.00, as per the tenancy agreement.

In this type of matter, the landlord must prove they served the tenant with the 10 Day Notice as per section 88 of the *Act* and section 43(2) of the *Residential Tenancy Regulation*.

On March 1, 2021, the *Regulation* was updated to provide that documents “*may be given to a person by emailing a copy to an email address provided as an address for service by the person.*”

The landlord has indicated that the 10 Day Notice was sent to a pre-agreed e-mail; however, I find the landlord has not submitted any evidence to demonstrate that tenant provided their e-mail address as a method of service of documents.

Section 71(2)(c) of the *Act* enables me to make an order that a document not served in accordance with the *Act* is sufficiently given or served.

I am satisfied that the tenant received the 10 Day Notice on the day they acknowledged receipt of the e-mail by text message.

For this reason, and in accordance with section 71(2)(c) of the *Act*, I find that the tenant has been served with the forwarding address on March 21, 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 sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, March 31, 2021.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$2,800.00, the amount claimed by the landlord for unpaid rent owing for March 2021, as of the date of this application, March 30, 2021.

Conclusion

I grant an Order of Possession to the landlord 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 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2,800.00 for rent owed for March 2021. The landlord is 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.

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 23, 2021

Residential Tenancy Branch