



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 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 May 26, 2021, the landlord sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request 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 Direct Request Proceeding documents were served on May 26, 2021 and are deemed to have been received by the tenant on May 31, 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*?

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

Background and Evidence

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 July 21, 2019, indicating a monthly rent of \$2,500.00, due on the first day of each month for a tenancy commencing on August 1, 2019
- A copy of a Repayment Plan dated December 10, 2020 indicating the tenant would be responsible for repayment of affected rent in monthly installments of \$592.86 starting on January 10, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 5, 2021, for \$13,150.00 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 May 15, 2021
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was placed in the tenant's mail slot on May 5, 2021
- A Direct Request Worksheet and ledger 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 \$2,500.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on May 5, 2021 and is deemed to have been received by the tenant on May 8, 2021, three days after it was placed in the mail slot.

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, May 18, 2021.

Policy Guideline #52 provides the following information pertaining to the *COVID-19 Related Measures Act (the C-19 Act)*:

“A landlord cannot pursue an eviction for unpaid affected rent unless they have already given a valid repayment plan or there is a valid prior agreement still in effect...”

Each installment must be paid on the same date that rent is due under the tenancy agreement...

A landlord and tenant may agree to change the due dates of installments as long as the date the first payment is due is at least 30 days after the date the landlord gives the repayment plan to the tenant.”

The landlord submitted a copy of a Repayment Plan showing the tenant would pay monthly installments on the tenth day of each month; however, the tenancy agreement indicates that the monthly rent is payable on the first of each month.

I also find the landlord has not submitted a copy of a document containing the tenant's signature to demonstrate the tenant consented in writing, to this change of payment date.

I find I am not able to confirm the validity of the Repayment Plan submitted by the landlord and for this reason, I cannot consider the portion of the landlord's application for a Monetary Order related to affected rent.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$9,300.00, the amount claimed by the landlord for unpaid rent owing for March 2020, September 2020, and from February 2021 to May 2021, as of the date of this application, May 14, 2021.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

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 sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$9,400.00 for rent owed for March 2020, September 2020, from February 2021 to May 2021, and for the recovery of the filing fee for this application. 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.

I dismiss the landlord's application for a Monetary Order for unpaid affected rent 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: June 04, 2021

Residential Tenancy Branch