



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 Landlords for an order of possession and a monetary order for unpaid rent and to recover the filing fee.

The Landlords submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that they served the Tenant with a Notice of Dispute Resolution Proceeding and supporting documents in person on May 30, 2021, which service was witnessed by J.C. The Landlords indicated the Tenant refused to sign the document to confirm receipt. Pursuant to section 89 and 90 of the *Act*, I find these documents were served on and received by the Tenant on May 30, 2021, the day they were served with a witness present.

Issues to be Decided

1. Are the Landlords entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. Are the Landlords entitled to a monetary order for unpaid rent pursuant to sections 46 and 67 of the *Act*?
3. Are the Landlords entitled to recover the filing fee 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 Landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on January 1, 2019, indicating a monthly rent in the amount of \$900.00 due on the first day of each month, for a tenancy commencing on January 1, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 14, 2021 for \$940.00 in unpaid rent due on April 1, 2021 (the "10 Day Notice"). 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 23, 2021;
- A copy of signed Proof of Service Notice to End Tenancy document which indicates that the 10 Day Notice was served on the Tenant by attaching a copy to the Tenant's door or other conspicuous place on April 14, 2021, which service was witnessed by K.S.G.; and
- A copy of a Direct Request Worksheet showing the rent owing in the amount of \$3,640.00.

Analysis

I have reviewed all documentary evidence and I find that the Tenant was obligated to pay monthly rent in the amount of \$900.00.

In accordance with sections 88 and 90 of the *Act*, I find that the Tenant is deemed to have received the 10 Day Notice on April 17, 2021, three days after it was attached to the Tenant's door or other conspicuous place with a witness present.

I accept the evidence before me that the Tenant failed to pay the rent owed in full or dispute the 10 Day Notice within five days after receipt of the 10 Day Notice as provided under section 46(4) of the *Act*.

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 April 27, 2021, the corrected effective date of the 10 Day Notice.

Therefore, I find the Landlords are entitled to an order of possession which will be effective two days after it is served on the Tenant.

With respect to the Tenant's request for a monetary award for unpaid rent, I find I am unable to determine the amount of rent due. The Direct Request Worksheet indicates that rent in the amount of \$900.00 was due on April 1, 2021 whereas the 10 Day Notice indicates that rent in the amount of \$940.00 was due on that date.

Further, the Direct Request Worksheet suggests that rent in the amount of \$2,740.00 was due on April 1, 2021 whereas, again, the 10 Day Notice indicates that rent in the amount of \$940.00 was due on that date.

Considering the ambiguity with respect to the amount of rent due, I find I am unable to grant the relief sought. Therefore, I find that the Landlords' request for a monetary order for unpaid rent is dismissed with leave to reapply.

As the Landlords have been partially successful, I find the Landlords are entitled to recover the \$100.00 filing fee paid to make the application

Conclusion

The Landlords are granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession must be served on the Tenant. The order of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

The Landlords' request for a monetary order for unpaid rent is dismissed with leave to reapply.

The Landlords are granted a monetary order in the amount of \$100.00 in recovery of the filing fee paid to make the application. The monetary order must be served on the Tenant. 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: June 7, 2021

Residential Tenancy Branch