



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR-PP, ORPM-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 June 11, 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 June 11, 2021 and are deemed to have been received by the tenant on June 16, 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 February 1, 2020, indicating a monthly rent of \$1,500.00, due on the first day of each month for a tenancy commencing on February 1, 2020
- A copy of a Repayment Plan dated August 21, 2020 indicating the tenant would be responsible for repayment of affected rent in monthly installments of \$270.00 starting on October 1, 2020
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 14, 2021, for \$2,750.00 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 April 27, 2021
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 5:26 pm on April 14, 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 \$1,500.00, 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 April 14, 2021 and is deemed to have been received by the tenant on April 17, 2021, three days after its posting.

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 section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, April 27, 2021.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of the date of this application, May 27, 2021.

The Direct Request Worksheet indicates the tenant made payments greater than the monthly rent in January 2021 and February 2021. However, I find the landlord has not indicated whether the overpayments were applied to affected rent arrears or to unaffected rent arrears.

I find I am not able to confirm which portion of the landlord's monetary claim is comprised of base rent and which portion is comprised of affected rent. For this reason, the landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

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 section 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 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 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 17, 2021

Residential Tenancy Branch