



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR-PP, 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 for unpaid rent and to recover the filing fee.

The Landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that the Landlord served the Tenant with a Notice of Direct Request Proceeding and supporting documents by registered mail on June 10, 2021. Canada Post receipts which included the tracking number were submitted in support. Pursuant to section 89 and 90 of the *Act*, I find these documents are deemed to have been received by the Tenant on June 15, 2021, five days after they were mailed.

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 a monetary order for unpaid rent pursuant to sections 46 and 67 of the *Act*?
3. Is the Landlord 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 Landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on September 22, 2012, indicating a monthly rent in the amount of \$745.00 due on the first day of each month, for a tenancy commencing on August 1, 2012;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 9, 2021 for \$5,843.04 in unpaid rent (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 March 22, 2021. The 10 Day Notice also indicates a copy was attached to the Tenant's door, which service was supported by a photograph of an envelope attached to the Tenant's door;
- A copy of signed Proof of Service Notice to End Tenancy documents which indicates that the 10 Day Notice was served on the Tenant by registered mail on March 9, 2021, which service was supported by a date-stamped envelope bearing Canada Post registered mail label which included the tracking number;
- A copy of an incomplete Direct Request Worksheet;
- A copy of a Statement from the period from March 31, 2019 to March 9, 2021 indicating a total outstanding amount of \$5,843.04;
- A copy of a Statement for the period from May 31, 2019 to May 1, 2021 indicating a total outstanding amount of \$6,638.18; and
- A copy of a Repayment Plan describing the repayment of \$4,003.04 in ten monthly payments, as follows: one monthly payment of \$403.04 on October 1, 2020 followed by nine monthly payments of \$400.00 from November 1, 2020 to July 1, 2021, inclusive.

Analysis

I have reviewed all documentary evidence and I find that the Tenant was obligated to pay monthly rent in the amount of \$745.00, plus payments in accordance with the Repayment Plan referred to above.

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 March 14, 2021, five days after it was sent by registered mail.

I accept the evidence before me that the Tenant failed to pay the rent owed in full within 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 Tenant is conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on March 24, 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 Tenant.

With respect to the Landlord's request for a monetary order for unpaid rent, I find there is insufficient evidence before me to determine how the amount due has been calculated. The Direct Request Worksheet has not been completed and the Statements provided do not set out the amounts due under the Repayment Plan. Therefore, I find that the Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply.

As the Landlord has been partially successful, I find the Landlord is entitled to recover the \$100.00 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 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 Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply.

The Landlord is granted a monetary order in the amount of \$100.00 in recovery of the filing fee. 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 18, 2021

Residential Tenancy Branch