



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, OPUM-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 20, 2021, the landlord personally served Tenant T.K. the Notice of Dispute Resolution Proceeding - Direct Request. The landlord had a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm personal service.

Based on the written submissions of the landlord and in accordance with section 89(1) of the *Act*, I find that the Direct Request Proceeding documents were duly served to Tenant T.K. on June 20, 2021.

The landlord submitted a second signed Proof of Service Notice of Direct Request Proceeding which declares that on June 20, 2021, the landlord served Tenant J.N. the Notice of Dispute Resolution Proceeding - Direct Request by handing the documents to Tenant T.K. The landlord had a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm personal service.

Based on the written submissions of the landlord and in accordance with section 89(2) of the *Act*, I find that the Direct Request Proceeding documents were duly served to Tenant J.N. on June 20, 2021.

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

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 on May 26, 2020 and the tenants on May 27, 2020, indicating a monthly rent of \$900.00, due on the first day of each month for a tenancy commencing on June 1, 2020
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 19, 2021, for \$3,600.00 in unpaid rent and \$1,747.29 in unpaid utilities. The 10 Day Notice provides that the tenants 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 2, 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 tenants' door at 10:10 am on March 23, 2021
- 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 tenants were obligated to pay the monthly rent in the amount of \$900.00, 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 March 23, 2021 and is deemed to have been received by the tenants on March 26, 2021, three days after its posting.

I accept the evidence before me that the tenants have 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 tenants are 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, April 5, 2021.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. I find that there is no written demand in the landlord's evidence submissions which would allow the landlord to treat the utilities as unpaid rent.

For this reason, the monetary portion of the landlord's application concerning unpaid utilities is dismissed, with leave to reapply.

In this type of matter, the landlord must prove they served the tenants with the Notice of Dispute Resolution Proceeding– Direct Request and all documents in support of the application in accordance with section 89 of the *Act*.

Section 89(1) of the *Act* does not allow for the Notice of Dispute Resolution Proceeding - Direct Request to be given to the tenant by leaving a copy with an adult who resides with the tenant.

Section 89(2) of the *Act* does allow for the Notice of Dispute Resolution Proceeding - Direct Request to be given to the tenant by leaving a copy with an adult who resides with the tenant, only when considering an Order of Possession for the landlord.

I find that the landlord has served the Notice of Dispute Resolution Proceeding - Direct Request to Tenant J.N. by leaving a copy with Tenant T.K., an adult who resides with Tenant J.N., and for this reason, the monetary portion of the landlord's application concerning unpaid rent, naming Tenant J.N. as a respondent, is dismissed, without leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$3,600.00, the amount claimed by the landlord for unpaid rent owing from December 2020 to March 2021, as of the date of this application, June 4, 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(s). Should the tenant(s) 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 \$3,700.00 for rent owed from December 2020 to March 2021 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and Tenant T.K. must be served with **this Order** as soon as possible. Should Tenant T.K. 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 portion of the landlord's application for a Monetary Order for unpaid rent naming Tenant J.N. as a respondent without leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid utilities 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 23, 2021

Residential Tenancy Branch