



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-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 based on unpaid rent, and an order granting recovery of the filing fee.

The Landlord submitted a signed Proof of Service Notice of Direct Request Proceeding document which declares that the Landlord served the Tenant with the Notice of Dispute Resolution Hearing and supporting documents by registered mail on July 14, 2021. Service in this manner was supported by Canada Post receipts which included the tracking number. In accordance with sections 89 and 90 of the *Act*, I find the Tenant is deemed to have received these documents of July 19, 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 monetary compensation for unpaid rent pursuant to section 67 of the *Act*?
3. 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 and the Tenant on April 21, 2018 indicating a monthly rent in the amount of \$1,550.00 due on the first day of each month, for a tenancy commencing on April 21, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 8, 2021 for \$12,000.00 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 June 18, 2021;
- A copy of a 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 on June 8, 2021, which service was witnessed by M.M.; and
- A copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

Analysis

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 June 11, 2021, three days after it was attached to the Tenant’s door.

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 June 21, 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 claim for unpaid rent, the onus is on the Landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the Landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

In this case, I have examined the documents submitted. The tenancy agreement indicates that rent in the amount of \$1,550.00 per month is due on the first day of each month. However, the Direct Request Worksheet submitted by the Landlord indicates that rent is due in the amount of \$1,200.00 per month and that this amount has not been paid since September 1, 2020. The Direct Request Worksheet does not indicate whether any partial payments were made and does not reconcile the difference in the amounts of rent due. There is also no documentation to support any change in rent during the tenancy.

I find that the precise amount of rent due is ambiguous and gives rise to an issue that cannot be resolved during a Direct Request Proceeding. For this reason, I find that the Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply.

As the Landlord is partially successful, I find they are entitled to a monetary award in the amount of \$100.00 in recovery of the 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 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 for this 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: July 20, 2021

Residential Tenancy Branch