



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR

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 two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on July 13, 2021, the landlord sent each of the tenants 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 Receipts containing the tracking numbers to confirm these mailings.

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 July 13, 2021 and are deemed to have been received by the tenant on July 18, 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*?

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 tenants on May 2, 2017, indicating a monthly rent of \$1,700.00, due on the first day of each month for a tenancy commencing on May 2, 2017
- A copy of a Notice of Rent Increase form showing the rent being increased from \$1,700.00 to the monthly rent amount of \$1,742.00
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 3, 2021, for \$1,742.00 in unpaid rent. 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 June 16, 2021
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenants by e-mail at 3:43 pm on June 3, 2021
- A copy of an e-mail containing the 10 Day Notice which was sent from the landlord to the tenants on June 6, 2021
- A copy of two postmaster confirmations of delivery showing that the e-mail sent by the landlord was delivered on June 3, 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 \$1,742.00, as per the tenancy agreement and the Notice of Rent Increase.

Section 71(2)(c) of the *Act* enables me to make an order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*.

I find that the landlord sent 10 Day Notice to the tenants by e-mail, which is not a method of service permitted under section 88 of the *Act*.

The landlord submitted a copy of a tenancy agreement addendum in which the tenants agreed to use e-mail as a method of service of documents. The landlord also submitted a copy of confirmations of delivery from postmaster showing that the 10 Day Notice was successfully delivered to the tenants' e-mails on June 3, 2021.

For these reasons, I am satisfied that the tenants received the 10 Day Notice. In accordance with section 71(2)(c) of the *Act*, I find that the 10 Day Notice has been served on June 3, 2021 and is deemed to have been received by the tenants on June 6, 2021.

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 section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, June 6, 2021.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$1,742.00, the amount claimed by the landlord for unpaid rent owing for June 2021, as of the date of this application, June 16, 2021.

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 section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,742.00 for rent owed for June 2021. The landlord is provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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.

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 19, 2021

Residential Tenancy Branch