



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR-PP, 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 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 July 14, 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 July 14, 2021 and are deemed to have been received by the tenant on July 19, 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

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 July 7, 2019, indicating a monthly rent of \$1,700.00, due on the first day of each month for a tenancy commencing on August 1, 2019
- A copy of a Repayment Plan dated September 10, 2020 indicating the tenant would be responsible for repayment of affected rent in monthly installments of \$666.67 from November 1, 2020 to June 1, 2021 and \$666.64 on July 1, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 2, 2021, for \$2,400.00 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 June 17, 2021
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenant by registered mail at 9:29 am on June 2, 2021
- A copy of a Canada Post receipt containing the tracking number to confirm the 10 Day Notice was sent to the tenant on June 2, 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 tenant was obligated to pay the monthly rent in the amount of \$1,700.00, 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 June 2, 2021 and is deemed to have been received by the tenant on June 7, 2021, five days after its registered mailing.

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, June 17, 2021.

Policy Guideline #52 provides the following information pertaining to the *COVID-19 Related Measures Act (the C-19 Act)*:

A landlord and tenant may mutually agree **in writing** to amend the terms of a repayment plan but only as follows:

- The landlord and tenant may agree to extend the repayment period so that the tenant will pay the affected rent over more installments.
- A landlord and tenant may agree to change the amount payable in each installment if the amount payable in earlier installments is less than the amount payable in later installments.
- A landlord and tenant may agree to change the due dates of installments as long as the date the first payment is due is at least 30 days after the date the landlord gives the repayment plan to the tenant.

The landlord submitted a copy of a Repayment Plan showing the tenant would pay a lower amount from November 2020 to June 2021. However, I find the landlord has not submitted a copy of a document containing the tenant's signature to demonstrate the tenant consented, in writing, to this repayment amendment.

I find I am not able to confirm the validity of the Repayment Plan submitted by the landlord and for this reason, I cannot consider the portion of the landlord's application for a Monetary Order related to affected rent.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$2,200.00, the amount claimed by the landlord for unpaid rent owing for September 2020 and June 2021, as of the date of this application, June 16, 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. 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 sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2,300.00 for rent owed for September 2020 and June 2021 and 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 affected 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: July 20, 2021

Residential Tenancy Branch