



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding P.C.P.M. AS AGENT FOR COUNTESS GARDENS
INC. and [tenant name suppressed to protect privacy]

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 by the Landlord to obtain an order of possession based on unpaid rent, to obtain monetary compensation for unpaid rent, and to recover the filing fee paid for the application.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the Landlord on July 19, 2021.

The Landlord submitted a copy of a Proof of Service Notice of Direct Request Proceeding form signed by the Tenant which declares that on July 31, 2021, the Landlord personally served the Tenant the Notice of Dispute Resolution Proceeding - Direct Request.

Based on the written submissions and evidence of the Landlord and in accordance with section 89(1) of the *Act*, I find that the Direct Request Proceeding documents were served on July 31, 2021.

Issues 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

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 November 27, 2020, indicating a monthly rent of \$2,050.00, due on the first day of each month for a tenancy commencing on December 1, 2020;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated July 8, 2021, for \$3,951.00 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 July 18, 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 Tenant’s door on July 8, 2021; and;
- a copy of a Direct Request Worksheet showing a monetary claim for part of June’s rent (\$1,201.00) and all of July’s rent (\$2,050.00). The Direct Request Worksheet indicates a partial payment of \$849.00 was received on June 21, 2021.

Analysis

I have reviewed all documentary evidence and I find that the Tenant was obligated to pay the monthly rent in the amount of \$2,050.00, 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 July 8, 2021 and is deemed to have been received by the Tenant on July 11, 2021, three days after it was posted to the door of the rental unit.

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 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, July 21, 2021.

Therefore, I find that the Landlord is entitled to an order of possession.

I note the amount of rent owing on the 10 Day Notice is \$3,951.00. The Landlord’s application indicates that they are claiming rent in the amount of \$3,351.00. The total amount of rent listed on the Direct Request Worksheet is \$3,351.00; however, when calculating the rent amounts, I find that the total amount of rent owing is \$3,251.00. The Direct Request Worksheet must clearly show all months for which the Tenant still owes rent in order to substantiate the Landlord’s claim.

I find that the rent owing on the Direct Request Worksheet and the total monetary amount requested by the Landlord on the application do not match the amount listed on the 10 Day Notice.

For this reason, the Landlord's application for a monetary order for unpaid rent is dismissed, with leave to reapply.

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.

The Landlord's application for a monetary order for unpaid rent is dismissed, with leave to reapply.

Pursuant to section 72 of the *Act*, I grant the Landlord a monetary order in the amount of \$100.00 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.

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: August 19, 2021

Residential Tenancy Branch