



Dispute Resolution Services

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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 by the Landlord for an order of possession and a monetary order based on unpaid rent. The Landlord also applied to recover the filing fee.

The Landlord submitted a copy of two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on July 16, 2021, the Landlord sent each Respondent the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The Landlord provided two Canada Post Customer Receipts containing the tracking numbers to confirm the documents were served to the Respondents.

Based on the written submissions and evidence of the Landlord and in accordance with sections 89(1) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on July 16, 2021 and are deemed to have been received by the Respondents on July 21, 2021, the fifth day after they were mailed.

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

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 Respondent C.P. on October 2, 2019, indicating a monthly rent of \$2,500.00, due on the first day of each month for a tenancy commencing on October 10, 2019;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated May 27, 2021, for \$17,500.00 in unpaid rent. The 10 Day Notice provides that the Respondents 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 6, 2021;
- a copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was served in person to Respondent A.H. at 8:50pm on May 27, 2021; and;
- a copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

Analysis

Section 12 (1) (b) of the Residential Tenancy Regulation establishes that a tenancy agreement is required to be “signed and dated by both the Landlord and the Tenant.”

I find that Respondent A.H. named on this application has not signed the tenancy agreement provided by the Landlord which is a requirement of the direct request process. For this reason, I find that A.H. is not a Tenant and the Landlord’s application seeking a monetary order against A.H. is dismissed without leave to reapply.

I have reviewed all documentary evidence and I find that Respondent C.P. is a Tenant and was obligated to pay the monthly rent in the amount of \$2,500.00.

In accordance with section 88 of the *Act*, I find that the 10 Day Notice was served on May 27, 2021, the day it was handed to Respondent A.H., an adult who resides with the Tenant.

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 6, 2021.

Therefore, I find that the Landlord is entitled to an order of possession and a monetary award in the amount of \$17,500.00, the amount claimed by the Landlord for unpaid rent from November 2020 to May 2021, as of the date of this application, June 28, 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 and any other occupant 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 \$17,600.00 for unpaid rent and 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 portion of the Landlord's application for a monetary order naming Respondent A.H. without 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: August 03, 2021

Residential Tenancy Branch