



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM 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 Landlords 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 Landlords on July 13, 2021.

The Landlords submitted a Proof of Service Notice of Direct Request Proceeding which declares that on July 27, 2021, the Landlords personally served the Tenant the Notice of Dispute Resolution Proceeding - Direct Request. The Tenant signed the Proof of Service Notice of Direct Request Proceeding form confirming that they received it.

Based on the written submissions and evidence of the Landlords and in accordance with section 89(1) of the *Act*, I find that the Direct Request Proceeding documents were served on July 27, 2021.

Issues to be Decided

Are the Landlords entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the Landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the Landlords entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The Landlords submitted the following relevant evidentiary material:

- a copy of a residential tenancy agreement which was signed by the Landlords and the Tenant on December 7, 2018, indicating a monthly rent of \$2,500.00, due on the first day of each month for a tenancy commencing on December 10, 2018;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated July 2, 2021, for \$7,730.00 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 12, 2021;
- a copy of a photograph showing a 10 Day Notice attached to a door; and;
- a copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the Landlords 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 Landlords 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 type of matter, the Landlords must prove that they served the Tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) in a manner that is considered necessary as per sections 71(2)(a) and 88 of the *Act*. Residential Tenancy Policy Guideline #39 provides the key elements that need to be considered when making an application for Direct Request.

Proof of service of the 10 Day Notice to End Tenancy may take the form of:

- registered mail receipt and printed tracking report;
- a receipt signed by the tenant, stating they took hand delivery of the document(s); or
- a witness statement that they saw the Landlord deliver the document(s).

I find the Landlords have not submitted a copy of a Proof of Service Notice to End Tenancy form or any other document containing the signature of a witness to confirm service of the 10 Day Notice to the Tenant.

I note the Landlords submitted a copy of a photograph showing the 10 Day Notice attached to a door; however, I find this is not adequate proof of service as outlined in Policy Guideline #39.

As I am not able to confirm service of the 10 Day Notice to the Tenant, which is a requirement of the Direct Request proceeding, I find that a hearing is necessary to address this issue.

Conclusion

I order that the direct request proceeding be adjourned and reconvened as a participatory hearing in accordance with section 74 of the *Act*. I find that a participatory hearing to be conducted by an arbitrator appointed under the *Act* is required to determine the details of the Landlords' application.

Notices of Reconvened Hearing are enclosed with this interim decision. The Landlords must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the Tenant within three (3) days of receiving this decision in accordance with section 89 of the *Act*.

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. Fact sheets are available at <http://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/information-sheets/rtb114.pdf> that explain evidence and service requirements.

For more information see our website at: gov.bc.ca/landlordtenant. If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

Lower Mainland: 604-660-1020

Victoria: 250-387-1602

Elsewhere in BC: 1-800-665-8779

This interim 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 12, 2021

Residential Tenancy Branch