



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE ADVANTAGE REALTY and [tenant name suppressed to protect privacy]

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 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 6, 2021.

The Landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on July 23, 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 they served the Tenant.

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 23, 2021 and are deemed to have been received by the Tenant on July 28, 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 names a Landlord who is not the applicant and was signed by the Tenant on March 29, 2017, indicating a monthly rent of \$1,150.00, due on the first day of each month for a tenancy commencing on April 1, 2017;
- a copy of a document showing the transfer of management responsibilities from the Landlord named on the tenancy agreement to the Landlord who is applying for dispute resolution;
- a copy of a Notice of Rent Increase form showing the rent being increased from \$1,150.00 to the current monthly rent amount of \$1,196.00;
- a copy of a Repayment Plan dated August 21, 2020 indicating the Tenant would be responsible for repayment of affected rent in monthly installments of \$396.40 starting on October 1, 2020;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated June 3, 2021, for \$13,524.00. 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 19, 2021;
- a copy of a signed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the Tenant by registered mail on June 3, 2021. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service; and;

- a copy of five Direct Request Worksheets showing the rent owing and paid during the relevant period. The Landlord indicates that the Tenant made a payment in the amount of \$2,400.00 on October 21, 2021.

Analysis

The Direct Request Worksheet indicates that the Tenant made a payment of \$2,400.00 on October 21, 2020, which is more than the monthly rent owing for October 2020 of \$1,196.00. I find the Landlord has not indicated whether the overpayment was applied towards the rent for September 2020 or if a portion was applied to the affected rent arrears.

I find I am not able to confirm which portion of the Landlord's monetary claim is comprised of base rent and which portion is comprised of affected rent. For this reason, the Landlord's application for a monetary order for unpaid rent is dismissed with leave to reapply.

In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on June 3, 2021 and is deemed to have been received by the Tenant on June 8, 2021, five days after it was mailed.

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 19, 2021.

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

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 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.

I dismiss the Landlord's application for a monetary order for unpaid 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: August 09, 2021

Residential Tenancy Branch