



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, MNU-DR

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 and utilities and to obtain monetary compensation for unpaid rent and utilities.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the landlords on July 12, 2021.

The landlords submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on August 11, 2021, the landlords personally served the tenant the Notice of Dispute Resolution Proceeding - Direct Request. The landlords had the tenant sign the Proof of Service Notice of Direct Request Proceeding to confirm personal service.

Based on the written submissions of the landlords and in accordance with section 89 of the *Act*, I find that the Direct Request Proceeding documents were duly served to the tenant on August 11, 2021.

Issue(s) 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*?

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 landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenant, indicating a monthly rent of \$1,100.00, due on the first day of each month for a tenancy commencing on October 1, 2020
- A copy of four utility bills from BC Hydro for the rental unit dated March 26, 2021 for \$225.54, April 27, 2021 for \$248.00, May 27, 2021 for \$248.00 and June 25, 2021 for \$248.00
- A copy of three utility bills from Fortis for the rental unit dated April 26, 2021 for \$17.41, May 26, 2021 for \$38.00, and June 23, 2021 for \$38.00
- A copy of a utility bill from the City of Surrey for the rental unit dated April 30, 2021 for \$291.25
- A copy of a demand letter from the landlords to the tenant, dated June 6, 2021, requesting payment of utilities in the amount of \$271.77
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 3, 2021, for \$1,100.00 in unpaid rent and \$271.77 in unpaid utilities. 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 August 14, 2021
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the tenant at 2:18 pm on July 3, 2021
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy. The Direct Request Worksheet noted that \$400.00 of the \$1,100.00 rent identified as owing in the 10 Day Notice was paid on July 5, 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 \$1,100.00, as per the tenancy agreement.

In accordance with section 88 of the *Act*, I find that the 10 Day Notice was duly served to the tenant on July 3, 2021.

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, August 14, 2021.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them.

I find that the date of the demand letter is less than 30 days from the time that the 10 Day Notice was issued to the tenant and that not enough time has passed to allow the landlords to treat the unpaid utilities as unpaid rent.

For this reason, the monetary portion of the landlords' application concerning unpaid utilities is dismissed, with leave to reapply.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary award in the amount of \$700.00, the amount claimed by the landlords for unpaid rent owing for July 2021.

Conclusion

I grant an Order of Possession to the landlords 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 67 of the *Act*, I grant the landlords a Monetary Order in the amount of \$700.00 for rent owed for July 2021. The landlords are 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 landlords' application for a Monetary Order for unpaid utilities 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 27, 2021

Residential Tenancy Branch