



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR-PP, MNU-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 and utilities, to obtain monetary compensation for unpaid rent and utilities, 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 August 18, 2021.

The landlords submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on September 8, 2021, the landlords personally served Tenant M.G.R. the Notice of Dispute Resolution Proceeding - Direct Request. The landlords had Tenant M.G.R. 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(1) of the *Act*, I find that the Direct Request Proceeding documents were duly served to Tenant M.G.R. on September 8, 2021.

The landlords submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on September 8, 2021, the landlords served Tenant L.G. the Notice of Dispute Resolution Proceeding - Direct Request by attaching the documents to the door of the rental unit. The landlords had a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm this service.

Based on the written submissions of the landlords and in accordance with sections 89(2) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on September 8, 2021. and are deemed to have been received by Tenant L.G. on September 11, 2021, the third day after their posting.

The landlords have also indicated that they sent the Notice of Dispute Resolution Proceeding – Direct Request to Tenant L.G. by e-mail. However, I find the landlords have not submitted any evidence to demonstrate that Tenant L.G.’s e-mail address was

provided specifically for service of documents, as required under section 43 of the *Residential Tenancy Regulation*.

For this reason, I find I cannot consider service of the Direct Request documents by e-mail.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent and utilities pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent and utilities 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

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 tenants on March 18, 2020, indicating a monthly rent of \$1,850.00, due on the first day of each month for a tenancy commencing on April 1, 2020
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 8, 2021, for \$1,950.00 in unpaid rent and \$2,407.08 in unpaid utilities. The 10 Day Notice provides that the tenants 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 18, 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 tenants on August 8, 2021
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

Analysis

I have reviewed all documentary evidence and I find that the tenants were obligated to pay the monthly rent in the amount of \$1,850.00, 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 tenants on August 8, 2021.

I accept the evidence before me that the tenants have 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 tenants are 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 18, 2021.

Therefore, I find that the landlords are entitled to an Order of Possession for unpaid rent.

Section 46(6) of the *Act* allows a landlord to treat unpaid utilities as unpaid rent if

- (a) a tenancy agreement requires the tenant to pay utility charges **to the landlord**, and
- (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

I find that the tenancy agreement states that the tenants are responsible for sharing 60% of the electricity and gas utilities but does not specify that the tenants are to pay those utilities to the landlords. 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 a monetary award in the amount of \$1,950.00, the amount claimed by the landlords for unpaid rent owing for April 2021, June 2021, and August 2021.

In this type of matter, the landlords must prove they served the tenants with the Notice of Dispute Resolution Proceeding – Direct Request and all documents in support of the application in accordance with section 89 of the *Act*.

Section 89(1) of the *Act* does not allow for the Notice of Dispute Resolution Proceeding - Direct Request to be given to the tenant by attaching a copy to a door at the address at which the tenant resides.

Section 89(2) of the *Act* does allow for the Notice of Dispute Resolution Proceeding - Direct Request to be given to the tenant by attaching a copy to a door at the address at which the tenant resides, only when considering an Order of Possession for the landlord.

I find that the landlords have served Tenant L.G. the Notice of Dispute Resolution Proceeding - Direct Request to the door of the rental unit at which Tenant L.G. resides. For this reason, I find the monetary portion of the landlords' application for unpaid rent can only be enforced against Tenant M.G.R.

As the landlords were partially successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant(s). Should the tenant(s) 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 landlords a Monetary Order in the amount of \$2,050.00 for rent owed for April 2021, June 2021, and August 2021 and for the recovery of the filing fee for this application. The landlords are provided with this Order in the above terms and Tenant M.G.R. must be served with **this Order** as soon as possible. Should Tenant M.G.R. 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 for unpaid rent naming Tenant L.G. as a respondent without leave to reapply.

I dismiss the landlord's 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: September 28, 2021

Residential Tenancy Branch