



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 filed by the Landlord for an order of possession and a monetary order for unpaid rent and to recover the filing fee.

The Landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that the Tenant was served with a Notice of Dispute Resolution Proceeding and supporting documents by registered mail on September 16, 2021. Service in this manner was supported with copies of Canada Post registered mail receipts bearing a tracking number. Pursuant to sections 89 and 90 of the *Act*, I find these documents are deemed to have been received by the Tenant on September 21, 2021, five days after they were mailed.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent pursuant to sections 46 and 67 of the *Act*?
3. Is the Landlord entitled to recover the filing fee 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 the parties on June 6, 2021, indicating a monthly rent in the amount of \$1,800.00 due on the 16th day of each month, for a tenancy commencing on June 12, 2021;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 24, 2021 for \$950.00 in unpaid rent (the “10 Day Notice”). 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 September 7, 2021;
- A copy of a signed Proof of Service Notice to End Tenancy which indicates that X.B.Z. served the 10 Day Notice on the Tenant in person on August 25, 2021, which service was witnessed by Z.W.;
- Copies of text messages between the Landlord and the Tenant; and
- A copy of a Direct Request Worksheet showing the rent due and paid during the relevant period.

Analysis

I have reviewed all documentary evidence and I find that the Tenant was obligated to pay monthly rent in the amount of \$1,800.00.

I find that the Tenant was served with and received the 10 Day Notice on August 25, 2021, the day it was given to the Tenant in person with a witness present.

The Direct Request Worksheet indicates that \$950.00 remained outstanding after rent became due on June 16, 2021. Based on the text messages submitted into evidence, it appears the Tenant incorrectly believed rent was due in full on the 1st day of each month whereas the tenancy agreement confirms rent is due in full on the 16th day of each month. I accept the evidence before me that the Tenant failed to pay the rent owed in full within five days after receipt of the 10 Day Notice 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 sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on September 1, 2021, the corrected effective date of the 10 Day Notice.

Therefore, I find the Landlord is entitled to an order of possession which will be effective two days after it is served on the Tenant.

I also find the Landlord has demonstrated an entitlement to a monetary award in the amount of \$950.00 for unpaid rent. Claims under the Direct Request Process are limited to the amount of rent set out in the 10 Day Notice. The Landlord remains at liberty to reapply for a monetary order for any additional unpaid rent or other losses.

Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the application.

Conclusion

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession must be served on the Tenant. The order of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$1,050.00 for unpaid rent and in recovery of the filing fee. The monetary order must be served on the Tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: October 5, 2021

Residential Tenancy Branch