



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 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 September 1, 2021.

The Landlords submitted two copies of signed Proof of Service Notice of Direct Request Proceeding forms which declare that on September 16, 2021, the Landlords sent each Tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit and by email.

The Landlords provided a copy of two Canada Post Customer Receipts containing the tracking numbers to confirm they served the Tenants. The Landlords submitted a snapshot of an e-mail from Tenant S.J. indicating that they no longer reside at the rental unit. The Landlords also submitted a copy of two emails dated September 16, 2021, containing the Notices of Dispute Resolution Proceeding – Direct Request as attachments.

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

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 on October 13, 2017 and the Tenants on October 17, 2017, indicating a monthly rent of \$1,000.00, due on the first day of each month for a tenancy commencing on November 1, 2017;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated August 20, 2021, for \$1,000.00 in unpaid rent. 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 September 4, 2021;
- a copy of two Proof of Service Notice to End Tenancy forms which indicate that the 10 Day Notice was sent to each Tenant by registered mail on August 21, 2021. The Landlords submitted a copy of two Canada Post Customer Receipts containing the tracking numbers to confirm they served the Tenants; and;
- a copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

Analysis

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 of the *Act* provides that a Notice of Dispute Resolution Proceeding - Direct Request may be served “*by any other means of service provided for in the regulations.*”

Section 43(2) of the *Residential Tenancy Regulation* provides that documents “*may be given to a person by emailing a copy to an email address **provided as an address for service by the person.***”

I find that the Landlords have sent the Notices of Dispute Resolution Proceeding - Direct Request to the Tenants by e-mail. However, I find there is no evidence to demonstrate that the Tenants indicated documents could be served by e-mail.

For this reason, I find I cannot accept service of the Notices of Dispute Resolution Proceeding – Direct Request by e-mail.

Section 89 of the *Act* permits service by sending a copy by registered mail to the address at which the person resides or, by sending a copy by registered mail to a forwarding address provided by the tenant.

The Landlords have indicated that they served each Tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The Landlords have provided a snapshot of an e-mail from Tenant S.J. in which Tenant S.J. indicates that they no longer reside at the rental unit.

As the Direct Request documents were sent to an address where Tenant S.J. does not reside, I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to Tenant S.J. For this reason, the Landlords' application for a monetary order for unpaid rent against Tenant S.J. is dismissed without leave to reapply.

However, in accordance with sections 89(1) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served to Tenant K.S. on September 16, 2021 and are deemed to have been received by Tenant K.S. on September 21, 2021, the fifth day after they were mailed.

I have reviewed all documentary evidence and I find that the Tenant K.S. was obligated to pay the monthly rent in the amount of \$1,000.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on August 21, 2021 and is deemed to have been received by Tenant K.S. on August 26, 2021, five days after it was mailed.

I accept the evidence before me that the Tenant K.S. 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 Tenant K.S. is conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, September 5, 2021.

Therefore, I find that the Landlords are entitled to an order of possession and a monetary award in the amount of \$1,000.00, the amount claimed by the Landlords for unpaid rent owing for August 2021.

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 Tenant K.S. Should Tenant K.S. and any other occupant 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 \$1,100.00 for rent owed for 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 K.S. must be served with **this order** as soon as possible. Should Tenant K.S. 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.

The Landlord's application for a monetary order for unpaid rent against Tenant S.J. is dismissed without 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: October 06, 2021

Residential Tenancy Branch