



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-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 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 4, 2021.

The Landlords submitted a signed Proof of Service Notice of Direct Request Proceeding form which declares that on September 18, 2021, the Landlords sent the Tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The Landlords 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 Landlords and in accordance with sections 89(1) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on September 18, 2021 and are deemed to have been received by the Tenant on September 23, 2021, the fifth day after they were mailed.

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 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 Tenant on July 27, 2020, indicating a monthly rent of \$1,700.00, due on the first day of each month for a tenancy commencing on September 1, 2020;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated August 28, 2021, for \$680.00 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 September 8, 2021;
- a copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was placed under the Tenant’s door and emailed to the Tenant on August 28, 2021;
- a copy of an email sent to the Tenant dated August 28, 2021 with a copy of the 10 Day Notice as an attachment;
- a copy of a text message from the Tenant dated August 28, 2021 indicating that they received the 10 Day Notice; 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 that they served the Tenant with the 10 Day Notice in accordance with section 88 of the *Act*.

Section 88 of the *Act* allows for service by either sending the 10 Day Notice to the Tenant by mail, by leaving a copy with the Tenant, by leaving a copy in the Tenant’s

mailbox or mail slot, attaching a copy to the Tenant's door or by leaving a copy with an adult who apparently resides with the Tenant.

On March 1, 2021, section 43(2) of the *Residential Tenancy Regulation* was updated to provide 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.***"

Policy Guideline #12 on Service Provisions provides that "*if there has been a history of communication between parties by email, but a party has not specifically provided an email address for service purposes, it is not advisable to use email as a service method.*"

The Landlords have indicated in the Special Details section of the Proof of Service Notice to End Tenancy form that they served the Tenant the 10 Day Notice to End Tenancy by placing a copy of the notice under the door of the rental unit and emailed a copy of the notice to the Tenant on August 28, 2021.

Section 71(2)(c) of the *Act* enables me to make an order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*.

I find the service of the 10 Day Notice under the door of the rental unit is not an allowable method of service per section 88 of the *Act*. I further find that there is no evidence to demonstrate that the Tenant specifically provided their e-mail address for service of documents, as required by section 43(2) of the *Residential Tenancy Regulation* and Policy Guideline #12.

However, I am satisfied that the Tenant received the 10 Day Notice the day they sent a text message to the Landlords acknowledging receipt of the notice.

For this reason, and in accordance with section 71(2)(c) of the *Act*, I find that the Tenant has been served the 10 Day Notice to End Tenancy on August 28, 2021.

I have reviewed all documentary evidence and I find that the Tenant was obligated to pay the monthly rent in the amount of \$1,700.00, as per the tenancy agreement.

I accept the evidence before me that the Tenant has failed to pay the rent owed in full by September 2, 2021, 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, September 8, 2021.

Therefore, I find that the Landlords are entitled to an order of possession.

As the Landlords were 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. 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 Landlords a monetary order in the amount of \$100.00 for the recovery of the filing fee for this application. 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.

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 12, 2021

Residential Tenancy Branch