



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 October 15, 2021.

The landlords submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on October 18, 2021, the landlords served Tenant A.Q.M. the Notice of Dispute Resolution Proceeding - Direct Request in person. The landlords had a witness 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 Tenant A.Q.M. on October 18, 2021.

The landlords also submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on October 18, 2021, the landlords sent Tenant C.E.M.J. and Tenant J.M. the Notices of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipts containing the tracking numbers to confirm these mailings.

Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on October 18, 2021 and are deemed to have been received by Tenant C.E.M.J. and Tenant J.M. on October 23, 2021, the fifth day after their registered mailing.

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*?

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 April 3, 2021, indicating a monthly rent of \$2,800.00, due on the fifteenth day of each month for a tenancy commencing on May 15, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 26, 2021, for \$3,010.00 in unpaid rent and \$30.00 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 October 7, 2021
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants' door at 12:14 pm on September 26, 2021
- A Direct Request Worksheet

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on September 26, 2021 and is deemed to have been received by the tenants on September 29, 2021, three days after its posting.

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 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, October 9, 2021.

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

I note that the amount of rent on the tenancy agreement (\$2,800.00) does not match the amount of rent being claimed on the 10 Day Notice (\$3,010.00). The Direct Request Worksheet must clearly show any additional months for which the tenants still owe rent to substantiate the landlords' claim.

I find I am not able to determine the precise amount of rent owing and for this reason the landlords' application for a Monetary Order for unpaid rent is dismissed with leave to reapply

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 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(s) must be served with **this Order** as soon as possible. Should the tenant(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.

I dismiss the landlords' application for a Monetary Order for unpaid rent 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: November 25, 2021

Residential Tenancy Branch