



Dispute Resolution Services

Page: 1

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 they served the Tenant with a Notice of Dispute Resolution Proceeding and supporting documents in person on October 9, 2021. Service of these documents was witnessed by R.G. and receipt was acknowledged by the Tenant’s signature on the document. I find these documents were served on and received by the Tenant on October 9, 2021.

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 November 4, 2020, indicating a monthly rent in the amount of \$1,300.00 due on the first day of each month, for a tenancy commencing on December 1, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 17, 2021 for \$1,300.00 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 27, 2021;
- A copy of a signed Proof of Service Notice to End Tenancy document which indicates that the 10 Day Notice was served on the Tenant in person on September 17, 2021, which service was witnessed by R.G.;
- A copy of a Direct Request Worksheet showing the rent due and paid during the relevant period; and
- A copy of a Rent Receipt confirming a rent payment of \$1,300.00 on October 1, 2021 for the period from September 1-30, 2021, “for use and occupancy only”.

Analysis

I have reviewed all documentary evidence and I find that the Tenant was obligated to pay monthly rent in the amount of \$1,300.00.

I find the Tenant was served with and received 10 Day Notice on September 17, 2021.

Although the Tenant made a payment of \$1,300.00 on October 1, 2021, I accept the evidence before me that the Tenant failed to pay the rent owed in full within the 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 section 46(5) of the *Act* to have accepted that the tenancy ended on September 27, 2021, the 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.

As noted above, the Tenant made a payment of \$1,300.00 on October 1, 2021 for the period from September 1-30, 2021. The payment was accepted “for use and occupancy only. Claims under the Direct Request process are limited to what is indicated on the 10 Day Notice. As the amount indicated on the 10 Day Notice was paid, the Landlord is not entitled to a monetary order for unpaid rent. This aspect of the Landlord’s application is dismissed. However, the Landlord remains at liberty to reapply for a monetary order for any additional unpaid rent or other losses.

Having been successful, I 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 \$100.00 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: November 15, 2021

Residential Tenancy Branch