



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Westsea Construction Ltd.
and [tenant name suppressed to protect privacy]

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 landlord 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 landlord on September 27, 2021.

The landlord submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on October 5, 2021, the landlord served each tenant the Notice of Dispute Resolution Proceeding - Direct Request by handing both sets of documents to Tenant A.D. The landlord had Tenant A.D. sign the Proof of Service Notice of Direct Request Proceeding forms to confirm this service.

Based on the written submissions of the landlord and in accordance with section 89(1) of the *Act*, I find that the Direct Request Proceeding documents were duly served to Tenant A.D. on October 5, 2021. In accordance with section 89(2) of the *Act*, I find that the Direct Request Proceeding documents were duly served to Tenant J.B. on October 5, 2021.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on November 14, 2019, indicating a monthly rent of \$1,900.00, due on the first day of each month for a tenancy commencing on December 1, 2019
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 7, 2021, for \$3,600.00 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 21, 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 3:30 pm on September 7, 2021
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

Analysis

I have reviewed all documentary evidence and I find that the tenants were obligated to pay the monthly rent in the amount of \$1,900.00, 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 September 7, 2021 and is deemed to have been received by the tenants on September 10, 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 section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, September 21, 2021.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$3,600.00, the amount claimed by the landlord for unpaid rent owing for June 2021, August 2021, and September 2021.

In this type of matter, the landlord 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(1) of the *Act* does not allow for the Notice of Dispute Resolution Proceeding - Direct Request to be given to the tenant by leaving a copy with an adult who resides with the tenant.

Section 89(2) of the *Act* does allow for the Notice of Dispute Resolution Proceeding - Direct Request to be given to the tenant by leaving a copy with an adult who resides with the tenant, only when considering an Order of Possession for the landlord.

I find that the landlord has served the Notice of Dispute Resolution Proceeding - Direct Request to Tenant J.B. by leaving a copy with Tenant A.D., an adult who resides with Tenant J.B. For this reason, I find the monetary portion of the landlord's application can only be enforceable against Tenant A.D.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlord 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 sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$3,700.00 for rent owed for June 2021, August 2021, and September 2021 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and Tenant A.D. must be served with **this Order** as soon as possible. Should Tenant A.D. 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 portion of the landlord's application for a Monetary Order naming Tenant J.B. as a respondent 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: November 05, 2021

Residential Tenancy Branch