



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLARK REALTY INC.
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 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 the Tenant was served with the Notice of Dispute Resolution Proceeding and supporting documents by leaving a copy attached to the Tenant's door on October 7, 2021, which service was witnessed by T.S. Pursuant to sections 89 and 90 of the *Act*, I find these documents are deemed to have been received by the Tenant on October 10, 2021, three days after they were attached to the Tenant's door.

However, section 89 of the *Act* does not permit service of a Notice of Dispute Resolution Proceeding by attaching a copy to a tenant's door when seeking a monetary order. Further, Policy Guideline #39 sets out the ways a Notice of Dispute resolution Proceeding may be served on a tenant and warns that this method cannot be used if the application includes a request for a monetary order. A similar caution is found on the Proof of Service Notice of Direct Request Proceeding submitted by the Landlord.

Considering the above, I find the Landlord's request for a monetary order for unpaid rent cannot proceed. This aspect of the Landlord's claim is dismissed with leave to reapply. It has not been considered further in this decision.

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 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 August 31, 2017, indicating a monthly rent in the amount of \$1,300.00 due on the first day of each month, for a tenancy commencing on September 1, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 8, 2021 for \$2,104.00 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 22, 2021;
- A copy of a signed Proof of Service Notice to End Tenancy which indicates that the 10 Day Notice was served on the Tenant by leaving a copy with an adult who appears to reside with the Tenant on September 8, 2021, which service was witnessed by I.S. and supported by the signature of the adult receiving the 10 Day Notice; and
- A copy of a Direct Request Worksheet showing the rent due and paid during the relevant period.

Analysis

In accordance with sections 88 and 90 of the *Act*, I find that the Tenant is deemed to have received the 10 Day Notice on September 8, 2021, the day it was served in person as described above.

I accept the evidence before me that the Tenant failed to pay the rent owed in full or dispute the 10 Day Notice within the five days after receipt as required under section 46(4) of the *Act*.

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 18, 2021, the corrected 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.

Having been partially successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the application.

Conclusion

The Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply.

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 9, 2021

Residential Tenancy Branch