



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-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 by attaching a copy to the Tenant’s door on October 8, 2021, which service was witnessed by M.M.

In this type of matter, the landlord must prove they served the tenant with the Notice of Dispute Resolution Proceeding and supporting documents in accordance with section 89 of the *Act*.

Section 89(1) of the *Act* does not allow for the Notice of Dispute Resolution Proceeding to be served on the tenant by attaching a copy to a door at the address at which the tenant resides when seeking a monetary order.

Section 89(2) of the *Act* does allow for the Notice of Dispute Resolution Proceeding to be served on the tenant by attaching a copy to a door at the address at which the tenant resides when seeking an order of possession.

Further, Policy Guideline #39, which provides direction to landlords making an application for dispute resolution by Direct Request, confirms that a Notice of Dispute Resolution Proceeding cannot be served by attaching a copy to the tenant’s door if the application includes a request for a monetary order.

I also note that the Proof of Service Notice of Dispute Resolution Proceeding document submitted by the Landlord states: “Do not attach a copy to door or noticeable place if requesting a Monetary Order.”

I find that the Landlord has served the Notice of Dispute Resolution Proceeding and supporting documents by attaching a copy to the door of the Tenant’s rental unit on October 8, 2021, and that these documents are deemed to have been received on October 11, 2021. However, pursuant to section 89 of the *Act* and Policy Guideline #39, I find that the Landlord’s request for a monetary order for unpaid rent is dismissed with leave to reapply. This aspect of the application 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 Single Room Rental Agreement which was signed by the parties on July 25, 2017, indicating a monthly rent in the amount of \$700.00 due on the first day of each month, for a tenancy commencing on July 1, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 18, 2021 for \$1,450.00 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 28, 2021;
- A copy of signed Proof of Service Notice to End Tenancy which indicates that the 10 Day Notice was served on the Tenant in person on September 18, 2021, which service was witnessed by M.M.; and

- A copy of a Direct Request Worksheet showing the rent due and paid during the relevant period.

Analysis

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

I find that the Tenant was served with and received the 10 Day Notice on September 18, 2021, the day it was served in person.

I accept the evidence before me that the Tenant failed to pay the rent owed in full within 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 28, 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.

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 16, 2021

Residential Tenancy Branch