



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 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 October 12, 2021.

The landlord submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on October 18, 2021, the landlord sent each tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipts containing the tracking numbers to confirm these mailings.

Based on the written submissions of the landlord 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 O.F. on October 23, 2021, the fifth day after their registered mailing.

I note that the landlord has indicated that Tenant T.H. is deceased. I also find there is no evidence to demonstrate that the Notice of Dispute Resolution Proceeding – Direct Request was successfully served to the estate of Tenant T.H.

For this reason, I will only proceed with the portion of the landlord's application naming Tenant O.F. as a respondent.

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 Tenant O.F., indicating a monthly rent of \$1,600.00, due on the first day of each month for a tenancy commencing on March 1st
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 22, 2021, for \$640.00 in unpaid rent. The 10 Day Notice provides that Tenant O.F. 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 2, 2021
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to Tenant O.F. by registered mail at 8:43 pm on September 22, 2021
- A copy of a Canada Post Customer Receipt containing the tracking number to confirm the 10 Day Notice was sent to Tenant O.F. on September 22, 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 Tenant O.F. was obligated to pay the monthly rent in the amount of \$1,600.00, 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 22, 2021 and is deemed to have been received by Tenant O.F. on September 27, 2021, five days after its registered mailing.

I accept the evidence before me that Tenant O.F. has 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 Tenant O.F. is 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 7, 2021.

In a Direct Request Proceeding, a landlord cannot pursue rent owed for an amount beyond the amount noted on the 10 Day Notice that was issued to the tenant. I find the

10 Day Notice only lists amounts owing for September 2021. For this reason, I cannot hear the portion of the landlord's monetary claim for rent owed for October 2021.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$640.00, the amount claimed by the landlord for unpaid rent owing for September 2021.

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 Tenant O.F. Should Tenant O.F. and any other occupant 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 \$740.00 for rent owed for 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 O.F. must be served with **this Order** as soon as possible. Should Tenant O.F. 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 for unpaid rent owing for September 2021 naming Tenant T.H. as a respondent without leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid rent owing for October 2021 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 22, 2021

Residential Tenancy Branch