



Dispute Resolution Services

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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 evidence by attaching a copy to the Tenant's door on December 25, 2021, which service was witnessed by G.J. Pursuant to sections 89 and 90 of the Act, I find these documents are deemed to have been received by the Tenant on December 28, 2021, three days after they were attached to the Tenant's door or other noticeable place.

However, in this type of matter, the Landlord must prove they served the Tenant with the Notice of Dispute Resolution Proceeding and supporting evidence 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 a 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.

I find that the Landlord has served the Notice of Dispute Resolution Proceeding by attaching a copy to the door of the Tenant's rental unit on December 25, 2021, and that it is deemed to have been received on December 28, 2021. However, pursuant to sections 89(1) and 89(2) of the Act, I find that the monetary portion of the application 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 signed residential tenancy agreement indicating a monthly rent in the amount of \$1,350.00 due by the first day of each month, for a tenancy commencing on May 1, 2021;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 5, 2021 for \$1,500.00 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 December 15, 2021;
- A copy of a signed Proof of Service Notice to End Tenancy document which indicates that the 10 Day Notice was served by leaving a copy in the Tenant's mailbox or mail slot and by email on December 5, 2021; 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 \$1,350.00.

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 December 8, 2021, three days after a copy was left in the Tenant's mailbox or mail slot.

I find the 10 Day Notice complies with the form and content requirements of section 52 of the Act.

I accept the evidence before me that the Tenant failed to pay the rent owed in full and did not dispute the 10 Day Notice within five days after receipt of the 10 Day Notice in accordance with 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 December 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 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 in 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).

The Landlord's request for a monetary order for unpaid rent or utilities is dismissed with leave to reapply, as described above.

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: January 21, 2022

Residential Tenancy Branch