



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 December 2, 2021.

The landlord submitted a witnessed Proof of Service Notice of Direct Request Proceeding form which declares that on December 8, 2021, the landlord personally served the tenant the Notice of Dispute Resolution Proceeding - Direct Request.

Based on the written submissions and evidence of the landlord and in accordance with section 89(1) of the *Act*, I find that the Direct Request Proceeding documents were served to the tenant on December 8, 2021.

Issues 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 tenant on March 10, 2021, indicating a monthly rent of \$1,350.00, due on the twenty-eighth day of each month for a tenancy commencing on March 28, 2021;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated November 4, 2021, for \$1,350.00 in unpaid rent. 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 November 15, 2021;
- a copy of a Proof of Service Notice to End Tenancy form signed by the tenant which indicates that the 10 Day Notice was personally served to the tenant at 11:00am on November 4, 2021;
- a copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

Analysis

I have reviewed all documentary evidence and I find that the tenant was obligated to pay the monthly rent in the amount of \$1,350.00, as per the tenancy agreement.

In accordance with section 88 of the *Act*, I find that the 10 Day Notice was served to the tenant on November 4, 2021.

I accept the evidence before me that the tenant 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 the tenant is 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, November 15, 2021.

Therefore, I find that the landlord is entitled to an Order of Possession.

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 November 2021. For this reason, I cannot hear the portion of the landlord’s monetary claim for rent owed for December 2021.

I find that the landlord is entitled to a monetary award in the amount of \$1,350.00, the amount claimed by the landlord for unpaid rent owing for November 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 the tenant. Should the tenant 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 \$1,450.00 for rent owed for November 2021 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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.

The landlord's application for a monetary order for unpaid rent owing for December 2021 is dismissed 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: January 12, 2022

Residential Tenancy Branch