



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-DR, MNR-DR**

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 and a Monetary Order based on unpaid rent.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the landlord on December 10, 2021.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding form which declares that on December 14, 2021, the landlord emailed the tenant the Notice of Dispute Resolution Proceeding - Direct Request to a pre-agreed email address provided by the tenant for service of documents. The landlord provided a copy of the sent email with attachments to confirm they served the tenant.

Based on the written submissions and evidence of the landlord and in accordance with sections 43(2) and 44 of the *Residential Tenancy Regulation*, I find that the Direct Request Proceeding documents were served on December 14, 2021 and are deemed to have been received by the tenant on December 17, 2021, the third day after they were emailed.

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*?

Background and Evidence

The landlord submitted the following relevant evidentiary material:

- a copy of a residential tenancy agreement which was signed by the landlord on October 29, 2021 and the tenant on October 31, 2021, indicating a monthly rent of \$3,500.00, due on the first day of each month for a tenancy commencing on November 1, 2021;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated December 4, 2021, for \$3,500.00 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 December 18, 2021;
- a copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was served to the tenant by handing it to an adult who resides with the tenant at 4:40pm on December 4, 2021;
- a copy of an Address for Service form RTB# 51 which shows the tenant’s pre-agreed upon email address for service of documents; and;
- 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 \$3,500.00, 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 December 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, December 18, 2021.

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

The landlord has indicated that they received payment in the amount of \$2,805.00 on December 11, 2021 for use and occupancy only. I find the landlord is entitled to a monetary award in the amount of \$695.00 for unpaid rent owing for December 2021.

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 section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$695.00 for rent owed for December 2021. 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.

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 17, 2022

Residential Tenancy Branch