



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, MNU-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 or utilities, 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 the Notice of Dispute Resolution Proceeding by attaching a copy to the door of the Tenant's rental unit on December 16, 2021. Service in this manner was witnessed by D.S. Pursuant to sections 89 and 90 of the Act, I find these documents are deemed to have been received by the Tenant on December 19, 2021, three days after they were attached to the Tenant's door.

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. However, 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.

In this case, I have found that the Landlord served the Notice of Dispute Resolution Proceeding by attaching a copy to the door of the Tenant's rental unit on December 16, 2021, and that it is deemed to have been received on December 19, 2021. However, pursuant to section 89 of the Act, I find that the monetary portion of the Landlord's application cannot be considered when the Tenant is served in this manner. Therefore, I find that this aspect of the Landlord's application is dismissed with leave to reapply.

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 \$1,500.00 due on the first day of each month, for a tenancy commencing on January 1, 2021;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 11, 2021 for \$1,500.00 in unpaid rent and \$222.05 in unpaid utilities (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 November 22, 2021;
- A copy of a Utility Invoice dated October 6, 2021 covering the period from July 1 to September 30, 2021 and confirming an outstanding amount of \$222.05;
- A copy of a signed Proof of Service Notice to End Tenancy document which indicates that the 10 Day Notice was served on the Tenant by attaching a copy to the door of the Tenant's residence on November 12, 2021, which service was witnessed by C.S.;
- A copy of a Direct Request Worksheet showing the rent and utilities due and paid during the relevant period.

Analysis

Pursuant to section 88 and 90 of the Act, I find that the Tenant is deemed to have received the 10 Day Notice on November 15, 2021, three days after it was attached to the Tenant's door.

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 granted under 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 November 25, 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 also 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 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: January 17, 2022

Residential Tenancy Branch