



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 tenancy agreement submitted into evidence includes the name and signature of only the Tenant K.G.L. The second tenant named in the application does not appear in the tenancy agreement. Therefore, pursuant to section 64 of the Act, I amend the application to remove the name of the tenant who is not named on the tenancy agreement. The Tenant K.G.L. is referred to in the singular throughout this decision.

The Landlord submitted a signed Proof of Service Notice of Direct Request Proceeding document which declares that the Landlord served the Tenant with a Notice of Dispute Resolution Proceeding and supporting documents by registered mail on December 7, 2021. Service in this manner was supported by a Canada Post registered mail receipt which confirmed the date and time of service and included the tracking number. Pursuant to sections 89 and 90 of the Act, I find these documents are deemed to have been received by the Tenant on December 12, 2021, five days after they were mailed.

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 a monetary order for unpaid rent pursuant to sections 46 and 67 of the Act?
3. 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 residential tenancy agreement which was signed on December 5, 2014, indicating a monthly rent in the amount of \$850.00 due on the first day of each month, for a tenancy commencing on December 15, 2014;
- Copies of Notices of Rent Increase effective March 1, 2016 (from \$850.00 to \$874.00), April 1, 2018 (from \$906.00 to \$942.00), and June 1, 2019 (from \$942.00 to \$965.00);
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 4, 2021 for unpaid rent of \$965.00 due on November 1, 2021 plus a "\$50 fee" (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 14, 2021;
- 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 leaving a copy in a mailbox or mail slot at the address where the Tenant resides on November 4, 2021, which service was witnessed by L.U.; and
- A copy of a Direct Request Worksheet showing the rent due and paid during the relevant period.

Analysis

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 November 7, 2021, three days after a copy was left in a mailbox or mail slot at the address where the Tenant resides.

I accept the evidence before me that the Tenant failed to pay the rent owed in full within five days after receipt of the 10 Day Notice 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 November 17, 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.

With respect to the Landlord's request for a monetary order for unpaid rent, I find there is insufficient evidence before me to grant the relief sought. Specifically, I find the Landlord has not provided evidence in support of a rent increase from \$874.00 per month to \$906.00 per month.

As I am unable to confirm that all rent increases were made in accordance with the Act, I find I am unable to determine the precise amount of rent due. Accordingly, this aspect of the Landlord's claim is dismissed with leave to reapply.

Having been partially 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 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 11, 2022

Residential Tenancy Branch