



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CITY OF KAMLOOPS
and [tenant name suppressed to protect privacy]

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 November 25, 2021.

The landlord submitted a copy of two witnessed Proof of Service Notice of Direct Request Proceeding forms which declare that on December 2, 2021, the landlord served each tenant the Notice of Dispute Resolution Proceeding - Direct Request by posting them to the door of the rental unit.

Based on the written submissions and evidence of the landlord and in accordance with sections 89(2) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on December 2, 2021 and are deemed to have been received by the tenants on December 5, 2021, the third day after they were posted to the door.

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 names a landlord who is not the applicant and was signed by the tenants on July 1, 2021, indicating a monthly rent of \$1,100.00, due on the first day of each month for a tenancy commencing on July 1, 2021;
- a copy of an assignment agreement dated September 21, 2021 and purchase and sale agreement dated August 9, 2021 that shows the applicant as the new owner and landlord;
- a copy of a property management agreement dated October 25, 2021 that shows the property management company named on the 10 Day Notice is authorized as agent for the landlord;
- a copy of a letter addressed to the residents dated October 27, 2021 informing them of the property management company as landlord;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated November 12, 2021, for \$1,100.00 in unpaid rent. The 10 Day Notice provides that the tenants 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 25, 2021;
- a copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants’ door at 3:38pm on November 12, 2021; 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 tenants were obligated to pay the monthly rent in the amount of \$1,100.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on November 12, 2021 and is deemed to have been received by the tenants on November 15, 2021, three days after it was posted to the door.

I accept the evidence before me that the tenants have 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 tenants are 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 25, 2021.

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

In this type of matter, the landlord must prove they served the tenants with the Notices of Dispute Resolution Proceeding – Direct Request and all documents in support of the application in accordance with section 89 of the *Act*.

Section 89(1) of the *Act* does not allow for the Notice of Dispute Resolution Proceeding - Direct Request to be given to the tenant by attaching a copy to a door at the address at which the tenant resides.

Section 89(2) of the *Act* does allow for the Notice of Dispute Resolution Proceeding - Direct Request to be given to the tenant by attaching a copy to a door at the address at which the tenant resides, only when considering an Order of Possession for the landlord.

I find that the landlord has served the Notices of Dispute Resolution Proceeding - Direct Request to the door of the rental unit at which the tenants reside, and for this reason, the monetary portion of the landlord's application for unpaid rent is dismissed, with leave to reapply.

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(s). Should the tenant(s) 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 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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 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 10, 2022

Residential Tenancy Branch