



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 Landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that they served the Tenant with a Notice of Dispute Resolution Proceeding and supporting documents by registered mail on December 9, 2021. Service in this manner was supported by Canada Post registered mail receipts which confirmed the date 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 14, 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 by the parties on February 28, 2020, indicating a monthly rent in the amount of \$1,200.00 due on the first day of each month, for a tenancy commencing on March 1, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 3, 2021 for \$770.00 in unpaid rent (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 17, 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 an address where the Tenant resides on November 3, 2021, which service was witnessed by M.B.;
- A copy of a Direct Request Worksheet showing the rent due and paid during the relevant period; and
- A copy of a statement of account for the period from July 31 to December 6, 2021.

Analysis

I have reviewed all documentary evidence and I find that the Tenant was obligated to pay monthly rent in the amount of \$1,200.00.

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 6, 2021, three days after it was left in a mailbox or mail slot at an address where the Tenant resides.

I find the 10 Day Notice complies with the form and content requirements of section 52 of the Act.

I accept the evidence before me that the Tenant failed to pay the rent owed in full or to dispute the 10 Day Notice within five days after receipt of the 10 Day Notice in accordance with 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 16, 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, it appears the amount sought by the Landlord includes three late payment fees of \$25.00 applied in September and October 2021. Administration fees of not more than \$25.00 are permitted under section 7 of the Residential Tenancy Regulation. However, these fees are not rent. Deducting these fees, I find that the Landlord is entitled to recover rent that was due when the 10 Day Notice was issued on November 3, 2021, which was \$695.00 (\$770.00 - \$75.00 = \$695.00). The Landlord remains at liberty to reapply for additional unpaid rent or other losses, including administration fees, in accordance with the Act.

Having been 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 \$795.00 in recovery of unpaid rent to November 30, 2021 and 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 13, 2022

Residential Tenancy Branch