



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 evidence by leaving a copy with M.Y., the Tenant's girlfriend, on December 29, 2021. A hand-written note indicates that M.Y. refused to sign to acknowledge receipt but took the documents into the house.

The Proof of Service Notice of Direct Request Proceeding also declares that the Landlord served the Tenant with a Notice of Dispute Resolution Proceeding and supporting evidence by attaching a copy to the Tenant's door on December 29, 2021.

Service as described above was witnessed by V.Y. who provided a signature.

In this type of matter, the landlord must prove they served the tenant with the Notice of Dispute Resolution Proceeding and supporting evidence in accordance with section 89(1) and 89(2) of the Act.

Section 89(1) of the Act does not allow a Notice of Dispute Resolution Proceeding to be served on a tenant by leaving a copy with an adult who appears to reside with the tenant or by attaching a copy to a door at the address at which the tenant resides when seeking a monetary order.

Section 89(2) of the Act does allow for the Notice of Dispute Resolution Proceeding to be served on the tenant in these ways when seeking an order of possession.

I find that the Landlord served the Notice of Dispute Resolution Proceeding and supporting evidence by leaving a copy with the Tenant's girlfriend and by attaching a copy attached to the Tenant's door on December 29, 2021. Pursuant to section 89 and 90 of the Act, I find these documents are deemed to have been received on January 1, 2021, three days after they were served. However, reading sections 89(1) and 89(2) of the Act together, I find I am unable to consider the Landlord's request for unpaid rent when documents are served in this way. Therefore, I find that the Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply. This aspect of the application has not been considered further in this decision

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 \$2,650.00 due by the 15th day of each month, for a tenancy commencing on October 15, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 23, 2021 for \$27,150.00 in unpaid rent due (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 December 9, 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 mailing a copy to the Tenant's residence or address for service on November 24, 2021, which service was supported by Canada Post registered mail receipts confirming the date and time of service and including the tracking number;
- A copy of a Direct Request Worksheet summarizing the rent due in 2020 and from June to November 2021; and
- Copies of email correspondence between the Landlord and the Tenant regarding the payment of rent dated October 19 to December 16, 2021.

Analysis

I have reviewed all documentary evidence and I find that the Tenant was obligated to pay monthly rent in the amount of \$2,650.00.

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 29, 2021, five days after it was sent by registered mail.

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 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 December 9, 2021, the 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 in 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 24, 2022

Residential Tenancy Branch