



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ARAGON (CHURCH) PROPERTIES
LTD. and [tenant name suppressed to protect privacy]

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 by the landlord to obtain an Order of Possession based on unpaid rent and utilities, to obtain monetary compensation for unpaid rent and utilities, 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 January 11, 2022.

The landlord submitted a copy of Proof of Service Notice of Direct Request Proceeding forms and a statement document which declare that on January 14, 2022, the landlord sent each tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlord provided a copy of three Canada Post Customer Receipts containing the tracking numbers to confirm they served the tenants.

Based on the written submissions and evidence of the landlord and in accordance with sections 89(1) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on January 14, 2022 and are deemed to have been received by the tenants on January 19, 2022, the fifth day after they were mailed.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent and utilities pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent and utilities 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

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 names a landlord who is not the applicant and signed by tenant An.B. and tenant K.L. on October 1, 2017, indicating a monthly rent of \$1,000.00, due on the first day of each month for a tenancy commencing on October 3, 2017;
- a copy of a land title search for the rental property dated April 16, 2021 that shows the applicant as the new owner;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated December 6, 2021, for \$8,433.20 in unpaid rent and \$353.80 in unpaid utilities. The 10 Day Notice provides that the tenants had five days from the date of service to pay the rent and utilities in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of December 17, 2021;
- a copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to each tenant by registered mail at 6:14pm on December 6, 2021. The landlord provided a copy of three Canada Post Customer Receipts containing the tracking numbers to confirm they served the tenants; and;
- a copy of a Direct Request Worksheet showing the rent and utilities owing and paid during the relevant period.

Analysis

Paragraph 12 (1) (b) of the Residential Tenancy Regulation establishes that a tenancy agreement is required to be “signed and dated by both the landlord and the tenant.”

I find that tenant Am.B. has not signed the tenancy agreement, which is a requirement of the direct request process. For this reason, I will only proceed with the portion of the landlord’s application naming tenant An.B. and tenant K.L. as respondents.

I have reviewed all documentary evidence and I find that tenant An.B. and tenant K.L. have signed the tenancy agreement and were obligated to pay the monthly rent in the amount of \$1,000.00, 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 December 6, 2021 and is deemed to have been received by tenant An.B. and tenant K.L. on December 11, 2021, five days after it was mailed.

I accept the evidence before me that tenant An.B. and tenant K.L. 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 tenant An.B. and tenant K.L. are conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, December 21, 2021.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award against tenant An.B. and tenant K.L. in the amount of \$8,433.20, the amount claimed by the landlord for unpaid rent owing for November 2019, February 2020, April 2020, July 2020, February 2021, June 2021, and August 2021 to December 2021.

Section 46(6) of the *Act* allows a landlord to treat unpaid utilities as unpaid rent if

- (a) **a tenancy agreement requires the tenant to pay utility charges to the landlord,** and
- (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

I find that the tenancy agreement indicates that utilities are not included in the rent. However, I find it does not specify that the tenants are to pay the utilities to the landlord. For this reason, the monetary portion of the landlord's application concerning unpaid utilities 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 tenant An.B. and/or tenant K.L. Should tenant An.B., tenant K.L., and **any other occupant** 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 sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$8,533.20 for rent owed for November 2019, February 2020, April 2020, July 2020, February 2021, June 2021, August 2021 to December 2021 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and tenant An.B. and/or tenant K.L. must be served with **this Order** as soon as possible. Should tenant An.B. and/or tenant K.L. 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.

I dismiss the portion of the landlord's application for a Monetary Order for unpaid rent naming tenant Am.B. as a respondent without leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid utilities 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: February 02, 2022

Residential Tenancy Branch