



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 Landlords for an order of possession and a monetary order for unpaid rent and to recover the filing fee.

The Landlords 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 attaching a copy to the Tenant's door on January 25, 2022. Service in this manner was witnessed by B.L. who provided a signature in support. Pursuant to sections 89 and 90 of the Act, I find these documents are deemed to have been received by the Tenant on January 28, 2022, three days after they were attached to the Tenant's door.

Section 89(1) of the Act does not provide for service of a Notice of Direct Request Proceeding on a tenant by attaching a copy to a door at the address at which the tenant resides when seeking a monetary order. I also note the Proof of Service Notice of Direct Request Proceeding provides the following instruction: "Do not attach a copy to door or noticeable place if requesting a Monetary Order."

However, section 89(2) of the Act does provide for service of a Notice of Direct Request Proceeding on a tenant by attaching a copy to a door at the address at which the tenant resides when seeking an order of possession.

As the Landlords served the Notice of Direct Request Proceeding and supporting documents by attaching a copy to the Tenant's door, I order that the Landlords' request for a monetary order for unpaid rent is dismissed with leave to reapply. It has not been considered further in this decision.

Issues to be Decided

1. Are the Landlords entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the Act?
2. Are the Landlords 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 Landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement signed by the parties on July 1, 2017, indicating a monthly rent in the amount of \$1,140.70 due on or before the first day of each month, for a tenancy commencing on July 1, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 3, 2022, for \$1,186.33 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 January 12, 2022;
- 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 Tenant's address on January 3, 2022, which service was witnessed by A.Y.; 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 January 6, 2022, three days after a copy was left in a mailbox or mail slot at the Tenant's address.

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 and did not dispute the 10 Day Notice within five days after receipt 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 January 16, 2022, the corrected effective date of the 10 Day Notice.

Therefore, I find the Landlords are 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 Landlords are entitled to recover the \$100.00 filing fee paid to make the application.

Conclusion

The Landlords' request for a monetary order for unpaid rent is dismissed with leave to reapply.

The Landlords are 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 Landlords are 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: February 8, 2022

Residential Tenancy Branch