



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 by the landlords 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 landlords on January 8, 2022.

The landlords submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on January 19, 2022, the landlords sent each tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipts containing the tracking numbers to confirm these mailings.

Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on January 19, 2022 and are deemed to have been received by the tenants on January 24, 2022, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords 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 landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenants on October 28, 2016, indicating a monthly rent of \$2,000.00, due on the first day of each month for a tenancy commencing on November 1, 2016
- A copy of a utility bill from the District of Saanich dated November 16, 2021 for \$404.24
- A copy of a demand letter from the landlords to the tenants, dated November 30, 2021, requesting payment of utilities in the amount of \$756.56
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 2, 2022, for \$6,229.65 in unpaid rent and \$756.56 in unpaid utilities. 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 January 12, 2022
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was served to the tenants in person at 7:21 pm on January 2, 2022
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy. The Direct Request Worksheet indicates that on January 6, 2022, the tenants made a payment of \$1,000.00
- A copy of a receipt dated January 6, 2022 for \$1,000.00 in rent paid by the tenant

Analysis

I have reviewed all documentary evidence and I find that the tenants were obligated to pay the monthly rent in the amount of \$2,000.00, as per the tenancy agreement.

In accordance with section 88 of the *Act*, I find that the 10 Day Notice was duly served to the tenants on January 2, 2022.

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, January 12, 2022.

Therefore, I find that the landlords are entitled to an Order of Possession for unpaid rent.

Section 46 (6) of the *Act* allows the landlords to treat the unpaid utilities as unpaid rent, 30 days after the tenants are given a written demand for them.

The landlords submitted a copy of a utility demand letter dated November 30, 2021. However, I find the landlords have not submitted a copy of a Proof of Service Written Demand to Pay Utilities form or any other document to confirm service of the demand letter to the tenants.

For this reason, the landlords' application for a Monetary Order for unpaid utilities is dismissed with leave to reapply.

I also note that the Direct Request Worksheet indicates that a payment of \$500.00 was applied towards the rent on January 6, 2022 and that a payment of \$500.00 was applied towards the utilities on January 6, 2022.

However, the landlords submitted a receipt which indicates that the full payment of \$1,000.00 received on January 6, 2022 was for rent.

I find I am not able to confirm the precise amount of rent owing and for this reason the landlords' application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

As the landlords were partially successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlords 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 landlords a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlords are 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.

I dismiss the landlords' application for a Monetary Order for unpaid rent and 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 04, 2022

Residential Tenancy Branch