



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-DR, MNR-DR, FFL**

Preliminary Matter

I note that the spelling of tenant T.G.'s name on the Application for Dispute Resolution submitted by the landlord is slightly different than the spelling of tenant T.G.'s name shown on the tenancy agreement and on the 10 Day Notice. Section 64(3)(c) of the *Act* allows me to amend the application to reflect both versions of tenant T.G.'s name, which I have done.

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, to obtain monetary compensation for unpaid rent, 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 18, 2022.

The landlord submitted a copy of a witnessed Proof of Service Notice of Direct Request Proceeding form signed by tenant T.G. which declares that on February 4, 2022, the landlord personally served each tenant the Notice of Dispute Resolution Proceeding - Direct Request. The landlord provided a copy of an Affidavit of Service to confirm they served the tenants.

Based on the written submissions and evidence of the landlord and in accordance with section 89(1) of the *Act*, I find that the Direct Request Proceeding documents were served to the tenants on February 4, 2022.

Issues to be Decided

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

Is the landlord entitled to monetary compensation for unpaid rent 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 was signed by the landlord and the tenants on November 11, 2004, indicating a monthly rent of \$1,000.00, due on the first day of each month for a tenancy commencing on December 1, 2004;
- a copy of one Notice of Rent Increase form showing the rent being increased from \$1,614.28 to the monthly rent amount of \$1,638.49;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated December 21, 2021, for \$2,892.87 in unpaid rent. 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 15, 2022;
- a copy of an Affidavit of Service which indicates that the 10 Day Notice was personally served to the tenants at 6:30pm on December 21, 2021; and;
- a copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

Analysis

In this type of matter, the landlord must prove that they served the tenants with the 10 Day Notice in a manner that is considered necessary as per sections 71(2)(a) and 88 of the *Act*. Residential Tenancy Policy Guideline #39 provides the key elements that need to be considered when making an application for Direct Request.

Proof of service of the 10 Day Notice to End Tenancy may take the form of:

- registered mail receipt and printed tracking report;
- a receipt signed by the tenant, stating they took hand delivery of the document(s); or
- a witness statement that they saw the landlord deliver the document(s).

The landlord submitted an Affidavit of Service which declares that they personally served the tenants the 10 Day Notice on December 21, 2021. Although the landlord did not submit a witness statement per Policy Guideline # 39, I accept the landlord's sworn statement as confirmation that the tenants were served the 10 Day Notice.

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the 10 Day Notice was served to the tenants on December 21, 2021.

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 15, 2022.

Therefore, I find that the landlord is entitled to an Order of Possession.

I note that the amount of rent on the tenancy agreement does not match the amount of rent being claimed on the 10 Day Notice. I note the landlord submitted one Notice of Rent Increase form showing the rent being increased from \$1,614.28 to the monthly rent amount of \$1,638.49, however, all Notice of Rent Increase forms must be submitted with the Application for Dispute Resolution to substantiate the claim for the increased rent.

I find I am not able to determine the precise amount of rent owing and for this reason the landlord's application for a Monetary Order for unpaid rent 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 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 landlord a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlord is 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.

The landlord's application for a Monetary Order for unpaid rent is dismissed 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 24, 2022

Residential Tenancy Branch