



Dispute Resolution Services

Page: 1

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, 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 landlords on January 12, 2022.

Notice of Dispute Resolution Proceeding – Direct Request

The landlords submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on January 21, 2022, the landlords served Tenant An.C. the Notice of Dispute Resolution Proceeding - Direct Request in person. The landlords had Tenant An.C. sign the Proof of Service Notice of Direct Request Proceeding to confirm personal service.

Based on the written submissions of the landlords and in accordance with sections 89(1) of the *Act*, I find that the Direct Request Proceeding documents were duly served to Tenant An.C. on January 21, 2022.

The landlords submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on January 22, 2022, the landlords served Tenant Ro.C. the Notice of Dispute Resolution Proceeding - Direct Request in person. The landlords had Tenant Ro.C. sign the Proof of Service Notice of Direct Request Proceeding to confirm personal service.

Based on the written submissions of the landlords and in accordance with sections 89(1) of the *Act*, I find that the Direct Request Proceeding documents were duly served to Tenant Ro.C. on January 22, 2022.

The landlords submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on January 22, 2022, the landlords served Tenant Am.C. and Tenant Ar.C. the Notice of Dispute Resolution Proceeding - Direct Request

by handing the documents to Tenant Ro.C. The landlords had Tenant Ro.C. sign the Proof of Service Notice of Direct Request Proceeding forms to confirm personal service.

Based on the written submissions of the landlords and in accordance with sections 89(2) of the *Act*, I find that the Direct Request Proceeding documents were duly served to Tenant Am.C. and Tenant Ar.C. on January 22, 2022.

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

The landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and Tenant An.C. on February 15, 2021, indicating a monthly rent of \$2,350.00, due on the fifteenth day of each month for a tenancy commencing on February 15, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated November 23, 2021, for \$4,700.00 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 December 2, 2021
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was handed to Tenant Ro.C. at 7:30 pm on November 23, 2021
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy. The Direct Request Worksheet noted that \$3,000.00 of the \$4,700.00 identified as owing in the 10 Day Notice was paid on November 30, 2021

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 Ro.C, Tenant Am.C. and Tenant Ar.C. have 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 landlords’ application naming Tenant An.C. as a respondent.

I find that Tenant An.C was obligated to pay the monthly rent in the amount of \$2,350.00, as per the tenancy agreement.

In accordance with section 88 of the *Act*, I find that the 10 Day Notice was duly served to Tenant An.C. on November 23, 2021.

I accept the evidence before me that Tenant An.C. has 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.C. is 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 3, 2021.

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

In a Direct Request Proceeding, a landlord cannot pursue rent owed for an amount beyond the amount noted on the 10 Day Notice that was issued to the tenant. I find the 10 Day Notice only lists amounts owing for October 2021 and November 2021. For this reason, I cannot hear the portion of the landlords’ monetary claim for rent owed for December 2021 and January 2022.

Therefore, I find the landlords are entitled to a monetary award in the amount of \$1,700.00, the amount claimed by the landlords for unpaid rent owing for October 2021 and November 2021.

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 Tenant An.C. Should Tenant An.C. **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 landlords a Monetary Order in the amount of \$1,800.00 for rent owed for October 2021 and November 2021 and for the recovery of the filing fee for this application. The landlords are provided with this Order in the above terms and Tenant An.C. must be served with **this Order** as soon as possible. Should Tenant An.C. 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 landlords' application for a Monetary Order for unpaid rent owing for October 2021 and November 2021, naming Tenant Ro.C., Tenant Am.C., and Tenant Ar.C. as respondents without leave to reapply.

I dismiss the landlords' application for a Monetary Order for unpaid rent owing for December 2021 and January 2022 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 07, 2022

Residential Tenancy Branch