



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR-PP, 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 Landlord for an order of possession and a monetary order for unpaid rent and to recover the filing fee.

The Landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that they served the Tenants with a Notice of Dispute Resolution Proceeding and supporting evidence by registered mail on February 9, 2022. Service in this manner was supported by Canada Post registered mail receipts which confirmed the date and time of purchase and included the tracking numbers. Pursuant to sections 89 and 90 of the Act, I find these documents are deemed to have been received by the Tenants on February 14, 2022, five days after they were mailed.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the Act?
2. Is the Landlord entitled to a monetary order for unpaid rent pursuant to sections 46 and 67 of the Act?
3. Is the Landlord 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 Landlord submitted the following relevant evidentiary material:

- A copy of a signed residential tenancy agreement indicating a monthly rent in the amount of \$2,900.00 due on the first day of each month, for a tenancy commencing on January 1, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 4, 2021, for \$38,500.00 in unpaid rent (the 10 Day Notice). 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 20, 2021;
- A copy of a signed Proof of Service Notice to End Tenancy document which indicates that the 10 Day Notice was served on the Tenants by registered mail on December 4, 2021, which service was supported by Canada Post registered mail receipts confirming the date and time of purchase and providing the tracking number, and printed tracking reports;
- A copy of a Direct Request Worksheet showing the rent due and paid during the relevant period; and
- A copy of a Repayment Plan dated September 15, 2020, setting out a plan for the repayment of \$6,100.00 in 10 monthly installments of \$508.33 commencing October 1, 2020.

Analysis

I have reviewed all documentary evidence and I find that the Tenants were obligated to pay monthly rent in the amount of \$2,900.00.

In accordance with sections 88 and 90 of the Act, I find that the Tenants are deemed to have received the 10 Day Notice on December 9, 2021, five days after it was sent to the Tenants by registered mail.

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 Tenants failed to pay the rent owed in full and did not dispute the 10 Day Notice within five days after receipt of the 10 Day Notice in accordance with section 46(4) of the Act.

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 December 19, 2021, the corrected effective date of the 10 Day Notice.

Therefore, I find the Landlord is entitled to an order of possession which will be effective two days after it is served on the Tenants.

With respect to the Landlord's claim for unpaid rent, I find the evidentiary material submitted by the Landlord gives rise to issues that cannot be addressed in a Direct Request Proceeding.

First, the application and the 10 Day Notice indicate the Landlord is owed \$38,500.00 in unpaid rent but the Landlord is claiming only \$35,000.00 in unpaid rent. Although this appears to be intended to stay within the monetary jurisdiction of the director of the Residential Tenancy Branch, this discrepancy raises questions about whether the Landlord intends to permanently waive entitlement to the amount of unpaid rent which exceeds the monetary jurisdiction of the director, and whether the Landlord intends to claim the balance in a subsequent proceeding. It also raises uncertainty with respect to which months are included in the claim for \$35,000.00.

Second, the Landlord claims unpaid rent dating back to May 1, 2020, at which time a state of emergency was in effect in British Columbia and Ministerial Order M-089 prohibited landlords from issuing notices to end tenancy. However, the ban on evictions for non-payment of rent ended on September 1, 2020. Although the Landlord appears to have provided the Tenants with a Repayment Plan on or about September 15, 2020, the documentary evidence indicates that no further steps were taken from October 2020 to December 2021 – a period of 15 months – during which time the rent arrears continued to accumulate. The reasons for this delay are unclear.

Considering the above, I find that the Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply.

As the Landlord has been partially successful, I find the Landlord is entitled to recover the \$100.00 filing fee.

Conclusion

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenants. The order of possession must be served on the Tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$100.00 in recovery of the filing fee. The monetary order must be served on the Tenants. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Landlord's request 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 25, 2022

Residential Tenancy Branch