



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 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 13, 2022.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on January 26, 2022, the landlord served the tenant the Notice of Dispute Resolution Proceeding - Direct Request in person. The landlord had a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm this service.

Based on the written submissions of the landlord and in accordance with section 89 of the *Act*, I find that the Direct Request Proceeding documents were duly served to the tenant on January 26, 2022.

Issue(s) 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 tenant on April 29, 2020, indicating a monthly rent of \$1,550.00, due on the first day of each month for a tenancy commencing on May 1, 2020
- A copy of a document signed by the landlord and the tenant on November 30, 2020, indicating the rent would be increased to \$1,600.00 as of March 1, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 3, 2022, for \$1,600.00 in unpaid rent. 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 October January 15, 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 tenant in person at 11:00 am on January 3, 2022
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the 10 Day Notice was duly served to the tenant on January 3, 2022.

I accept the evidence before me that the tenant 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 the tenant is 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, 2021.

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

Part 3, section 41 of the *Act* establishes that “a landlord must not increase rent except in accordance with this Part.”

Part 3, section 42(1)(a) of the *Act* establish that a landlord must not impose a rent increase for at least 12 months after the date on which the tenant’s rent was first payable for the rental unit. Section 42(3) of the *Act* states that “A notice of a rent increase must be in the approved form.”

I find the tenancy began on May 1, 2020, and that the earliest that a rent increase under the *Act* could have taken effect was May 1, 2021. However, the document submitted by the landlord indicates that the rent was increased as of March 1, 2021.

I also note that, while the landlord submitted a document signed by the tenant, I find the landlord has not submitted a copy of a Notice of Rent Increase form, which is a requirement of the *Act*.

I find I am not able to confirm the amount of the monthly rent 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. Should the tenant 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 must be served with **this Order** as soon as possible. Should the tenant 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 landlord's application for a Monetary Order for unpaid rent 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 08, 2022

Residential Tenancy Branch