



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 23, 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*?

Notice of Dispute Resolution Proceeding – Direct Request

In this type of matter, the landlord must prove they served the tenants with the Notice of Dispute Resolution Proceeding – Direct Request and all documents in support of the application in accordance with section 89 of the *Act*.

The landlord submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on January 25, 2022, the landlord sent Tenant H.E.B. and Tenant D.S. the Notice of Dispute Resolution Proceeding - Direct Request by e-mail.

Policy Guideline #39 provides that service by e-mail may be proven by providing a copy of the outgoing email and proof that the tenant agreed to receive documents by e-mail.

I find the landlord has not submitted a copy of the outgoing e-mails containing the Direct Request documents as attachments to confirm this service. There is no evidence to demonstrate that Tenant H.E.B. and Tenant D.S. indicated documents could be served by e-mail.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to Tenant H.E.B. and Tenant D.S. and for this reason, I will only proceed with the portion of the landlord's application naming Tenant N.S. as a respondent.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on January 25, 2022, the landlord served Tenant N.S. the Notice of Dispute Resolution Proceeding - Direct Request by attaching the documents to the door of the rental unit. 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 sections 89(2) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on January 25, 2022 and are deemed to have been received by Tenant N.S. on January 28, 2022, the fifth day after their registered mailing.

I also note that section 89(1) of the *Act* does not allow for the Notice of Dispute Resolution Proceeding - Direct Request to be given to the tenant by attaching a copy to a door at the address at which the tenant resides.

Section 89(2) of the *Act* does allow for the Notice of Dispute Resolution Proceeding - Direct Request to be given to the tenant by attaching a copy to a door at the address at which the tenant resides, only when considering an Order of Possession for the landlord.

As the landlord has served the Notice of Dispute Resolution Proceeding - Direct Request to the door of the rental unit at which Tenant N.S. resides, the monetary portion of the landlord's application for unpaid rent is dismissed, with leave to reapply.

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 Tenant N.S., indicating a monthly rent of \$2,400.00, due on the first day of each month for a tenancy commencing on October 1, 2020

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 2, 2022, for \$4,400.00 in unpaid rent. The 10 Day Notice provides that Tenant N.S. 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 posted to Tenant N.S.'s door at 9:40 pm on January 2, 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 I find that Tenant N.S. was obligated to pay the monthly rent in the amount of \$2,400.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on January 2, 2022 and is deemed to have been received by Tenant N.S. on January 5, 2021, three days after its posting.

I accept the evidence before me that Tenant N.S. 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 N.S. 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, January 15, 2022.

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

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 Tenant N.S. Should Tenant N.S. 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 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 Tenant N.S. must be served with **this Order** as soon as possible. Should Tenant N.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 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