



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1037429 BC LTD
and [tenant name suppressed to protect privacy]

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 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 each of the Tenants with a Notice of Dispute Resolution Proceeding and supporting documents by attaching a copy to the Tenants' door on January 25, 2022. Service in this manner was witnessed by A.F. who provided a signature in support. Pursuant to sections 89 and 90 of the Act, I find these documents are deemed to have been received by the Tenants on January 28, 2022, three days after they were attached to the Tenants' door.

However, section 89(1) of the Act does not allow for a Notice of Direct Request Proceeding to be served on a tenant by attaching a copy to a door at the address at which the tenant resides when seeking a monetary order.

Section 89(2) of the Act does allow for the Notice of Direct Request Proceeding to be served on a tenant by attaching a copy to a door at the address at which the tenant resides when considering an order of possession for the landlord.

I also note the Proof of Service Notice of Direct Request Proceeding states: "Do not attach a copy to door or noticeable place if requesting a Monetary Order."

I find that the landlord served the Notice of Direct Request Proceeding and supporting documents by attaching a copy to the Tenants' door. For this reason, I order that the Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply. It has not been considered further in this decision.

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 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 residential tenancy agreement signed by the parties on August 7, 2021, indicating a monthly rent in the amount of \$1,100.00 due on the first day of each month, for a tenancy commencing on August 22, 2021;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 3, 2022, for \$2,200.00 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 January 16, 2022;
- A copy of a signed Proof of Service Notice to End Tenancy document dated January 3, 2022, which indicates that the 10 Day Notice was served on the Tenants by attaching a copy to the door of the Tenants' residence on January 3, 2022, which service was witnessed by D.H.; and
- A copy of a Direct Request Worksheet showing the rent due and paid during the relevant period.

Analysis

I have reviewed all documentary evidence and I find that the Tenants were obligated to pay monthly rent in the amount of \$1,100.00.

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 January 6, 2022, three days after it was attached to the Tenants' door.

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 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 January 16, 2021, the 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.

I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the application.

Conclusion

The Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply.

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).

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 7, 2022

Residential Tenancy Branch