



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CYCLONE HOLDINGS
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 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 copy of two Proof of Service Notice of Direct Request Proceeding forms which declare that on January 27, 2022, the landlord sent each tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlord provided a copy of two Canada Post Customer Receipts containing the tracking numbers to confirm they served the tenants.

Based on the written submissions and evidence of the landlord and in accordance with sections 89(1) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on January 27, 2022 and are deemed to have been received by the tenants on February 1, 2022, the fifth day after they were mailed.

Issues 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 tenant R.D. on September 1, 2011, indicating a monthly rent of \$680.00, due on the first day of each month for a tenancy commencing on September 1, 2011;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated January 2, 2022, for \$848.59 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 January 16, 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 tenants by leaving a copy in the tenants’ mailbox 6:30pm on January 2, 2022; and;
- a copy of a Direct Request Worksheet showing the rent owing during the relevant period.

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 A.L. has not signed the tenancy agreement, which is a requirement of the direct request process. For this reason, the portion of the landlord’s application against tenant A.L. is dismissed without leave to reapply.

I have reviewed all documentary evidence and I find that tenant R.D. has signed 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 R.D. on January 5, 2022, three days after it was left in tenant R.D.'s mailbox.

I accept the evidence before me that tenant R.D. 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 R.D. 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 16, 2022.

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

I note that the amount of rent on the tenancy agreement does not match the amount of rent being claimed on the 10 Day Notice. The Direct Request Worksheet must clearly show any additional months for which tenant R.D. still owes rent; or, if there has been a rent increase, the appropriate Notice of Rent Increase forms must be submitted with the Application for Dispute Resolution to substantiate the claim for the increased rent.

I find I am not able to determine the precise amount of rent owing 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 tenant R.D. Should tenant R.D. 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 R.D. must be served with **this Order** as soon as possible. Should tenant R.D. 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 landlord's application for a Monetary Order naming tenant A.L. as a respondent without leave to reapply.

The landlord's application 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 10, 2022

Residential Tenancy Branch