



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 28, 2022.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding form which declares that on February 15, 2022, the landlord emailed the tenant the Notice of Dispute Resolution Proceeding - Direct Request in accordance with an order for substituted service. The landlord provided a copy of the sent email with the Direct Request Proceeding documents as attachments to confirm they served the tenant.

Based on the written submissions and evidence of the landlord and in accordance with section 71(1) of the *Act*, I find that the Direct Request Proceeding documents were served on February 15, 2022 and are deemed to have been received by the tenant on February 18, 2022, the third day after they were emailed.

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 on August 14, 2021 and the tenant on August 15, 2021, indicating a monthly rent of \$2,600.00, for a tenancy commencing on August 15, 2021;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated January 6, 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 January 16, 2022;
- a copy of a Proof of Service Notice to End Tenancy form which indicates that a copy of the 10 Day Notice was posted to the tenant’s door and left in the tenant’s mail slot at 8:00am on January 6, 2022. The landlord also indicates a copy of the 10 Day Notice was emailed to the tenant at 8:13am on January 6, 2022. The landlord submitted a copy of the email sent on January 6, 2022 to confirm they served the tenant;
- a copy of three emails dated January 6, 2022 exchanged between the landlord and the tenant discussing the 10 Day Notice; and;
- a copy of a Direct Request Worksheet showing the rent owing and partial payment of \$1,000.00 received on January 1, 2022.

Analysis

In this type of matter, the landlord must prove that they served the tenant with the 10 Day Notice in a manner that is considered necessary as per sections 71(2)(a) and 88 of the *Act*. Residential Tenancy Policy Guideline #39 provides the key elements that need to be considered when making an application for Direct Request.

Proof of service of the 10 Day Notice to End Tenancy may take the form of:

- registered mail receipt and printed tracking report;
- a receipt signed by the tenant, stating they took hand delivery of the document(s); or
- a witness statement that they saw the landlord deliver the document(s).

The landlord indicates that they served the tenant the 10 Day Notice by posting a copy to the tenant's door and leaving a copy in the tenant's mail slot. However, I find on the second page of the Proof of Service Notice to End Tenancy there is no signature of a witness, to confirm these methods of service of the 10 Day Notice to the tenant.

I find I cannot confirm service of the 10 Day Notice to the tenant by the methods listed above and for this reason I cannot accept these methods of service.

On March 1, 2021, section 43(2) of the *Residential Tenancy Regulation* was updated to provide that documents "*may be given to a person by emailing a copy to an email address provided as an address for service by the person.*"

The landlord has also indicated that they served the tenant the 10 Day Notice by email on January 6, 2022. The landlord provided a copy of the sent email dated January 6, 2022, along with copies of three emails exchanged between the landlord and tenant discussing service of the 10 Day Notice to confirm this service.

Although the landlord did not submit evidence to demonstrate that the tenant's email address was provided to them by the tenant to serve them documents, I accept the email evidence dated January 6, 2022 submitted by the landlord to confirm the tenant received the 10 Day Notice on January 6, 2022.

I have reviewed all documentary evidence and I find that the tenant was obligated to pay the monthly rent in the amount of \$2,600.00, as per the tenancy agreement.

In accordance with section 44 of the *Residential Tenancy Regulation*, I find that the 10 Day Notice was served to the tenant on January 6, 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 16, 2022.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$1,600.00, the amount claimed by the landlord for unpaid rent owing for January 2022.

As the landlord was 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 sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,700.00 for rent owed for January 2022 and 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.

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 22, 2022

Residential Tenancy Branch