



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Boundary Family Services Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPU-DR, MNU-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 and utilities, to obtain monetary compensation for unpaid rent and utilities, 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 24, 2022.

The landlord submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on February 11, 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 the Canada Post Customer Receipts containing the tracking number to confirm this mailing.

Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on February 11, 2022 and are deemed to have been received by the tenants on February 16, 2022, the fifth day after their registered mailing.

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 Tenant D.E. on April 1, 2021, indicating a monthly rent of \$1,100.00, due on the first day of each month for a tenancy commencing on April 1, 2021
- A copy of invoices from the landlord for payment of utilities
- A copy of two demand letters from the landlord to the tenants requesting payment of utilities, dated November 4, 2021, for \$478.22 and December 16, 2021, for \$752.60
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 11, 2022, for \$3,300.00 in unpaid rent and \$752.60 in unpaid utilities. 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 24, 2022
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants' door at 3:06 pm on January 11, 2022
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

Analysis

I find that tenancy agreement lists the second tenant as Person C.C. which does not match the name of the second respondent listed on the Application for Dispute Resolution, Person C.E. In an *ex-parte* process, I have to be satisfied with the names of the parties. I find this discrepancy raises a question that cannot be addressed in a Direct Request proceeding.

For this reason, I will only proceed with the portion of the landlord's application naming Tenant D.E. as a respondent.

I find that Tenant D.E. was obligated to pay the monthly rent in the amount of \$1,100.00, 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 11, 2022 and is deemed to have been received by Tenant D.E. on January 14, 2022, three days after its posting.

I accept the evidence before me that Tenant D.E. 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 D.E. 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 24, 2022.

Policy Guideline #39 on Direct Requests provides the following requirement for utilities:

“The landlord must prove service on the tenant of the written demand for payment of utilities... The demand letter must include copies of the utility bills”

I note the landlord submitted a copy of invoices from the landlord detailing the utilities owing. However, I find the landlord has not submitted a copy of the utility bills from the service providers to confirm the amount of the utilities that were charged for the rental unit.

I find I am not able to confirm the amount of the unpaid utilities and for this reason, the landlord's application for a Monetary Order for unpaid utilities is dismissed, with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$3,300.00, the amount claimed by the landlord for unpaid rent owing from November 2021 to December 2022.

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 D.E. Should Tenant D.E. **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 sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$3,400.00 for rent owed from November 2021 to 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 Tenant D.E. must be served with **this Order** as soon as possible.

Should Tenant D.E. 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 for unpaid rent naming respondent Tenant C.E., without leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid utilities 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: March 02, 2022

Residential Tenancy Branch