



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 landlords 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 landlords on February 11, 2022.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords 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 landlords 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*. Policy Guideline # 39 provides the key elements that need to be considered when making an application for Direct Request

Proof of service of the Notice of Direct Request Proceeding 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 landlords submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on February 15, 2022, the landlords served Tenant J.G.K. the Notice of Dispute Resolution Proceeding - Direct Request in person. The landlords had a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm personal service.

Based on the written submissions of the landlords and in accordance with section 89 of the *Act*, I find that the Direct Request Proceeding documents were duly served to Tenant J.G.K. on February 15, 2022.

The landlords submitted a second Proof of Service Notice of Direct Request Proceeding form which declares that on February 15, 2022, the landlords served Tenant J.L. the Notice of Dispute Resolution Proceeding - Direct Request in person.

However, I find the form does not contain the signature of a witness or of the person who received the documents, to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to Tenant J.L.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to Tenant J.L., which is a requirement of the Direct Request process. For this reason, I will only proceed with the portion of the landlords' application naming Tenant J.G.K. as a respondent.

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 landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by Tenant J.G.K. on November 4, 2017, indicating a monthly rent of \$940.00, due on the first day of each month for a tenancy commencing on December 1, 2017
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 20, 2022, for \$750.00 in unpaid rent. The 10 Day Notice provides that Tenant J.G.K. 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 30, 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 J.G.K.'s door at 5:00 pm on January 20, 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 in accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on January 20, 2022 and is deemed to have been received by Tenant J.G.K. on January 23, 2022, three days after its posting.

I accept the evidence before me that Tenant J.G.K. has failed to pay the rent listed on the 10 Day Notice 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 J.G.K. 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, February 2, 2022.

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

I note that the amount of the rent listed on the tenancy agreement (\$940.00) does not match the amount of the monthly rent listed on the Direct Request Worksheet (\$900.00).

I find I am not able to confirm the precise amount of rent owing and for this reason the landlords' application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

As the landlords were partially successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on Tenant J.G.K. Should Tenant J.G.K. **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 landlords a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlords are

provided with this Order in the above terms and Tenant J.G.K. must be served with **this Order** as soon as possible. Should Tenant J.G.K. 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 landlords' 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: March 09, 2022

Residential Tenancy Branch