



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 landlords 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 landlords on February 9, 2022.

The landlords submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on February 16, 2022, the landlords sent each tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipts containing the tracking numbers to confirm these mailings.

Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on February 16, 2022 and are deemed to have been received by the tenants on February 21, 2022, the fifth day after their registered mailing.

Issue(s) to be Decided

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

Are the landlords entitled to monetary compensation for unpaid rent and utilities 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*?

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 the landlords and the tenants on December 5, 2019, indicating a monthly rent of \$8,995.00, due on the first day of each month for a tenancy commencing on January 1, 2020
- A copy of an e-mail demand letter dated December 3, 2021, requesting payment of four months' rent
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated December 22, 2021, for \$35,980.00 in unpaid rent and \$600.00 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 2, 2022
- A copy of a Proof of Service Notice to End Tenancy form and a copy of service document which was signed by one of the tenants and a witness, that indicate the 10 Day Notice was served to the tenants in person at 2:00 pm on December 22, 2021
- 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 I find that the tenants were obligated to pay the monthly rent in the amount of \$8,995.00, as per the tenancy agreement.

In accordance with section 88 of the *Act*, I find that the 10 Day Notice was duly served to the tenants on December 22, 2021.

I accept the evidence before me that the tenants have 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 tenants are 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 2, 2022.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them.

I find that the landlords submitted a demand letter requesting payment of rent. However, there is no written demand for utilities in the landlords' evidence submissions which would allow the landlords to treat the utilities as unpaid rent.

For this reason, the monetary portion of the landlords' application concerning unpaid utilities is dismissed, with leave to reapply.

The landlords have indicated that the total unpaid rent owing from September 2021 to December 2021 is \$35,980.00. However, as the Residential Tenancy Branch has a monetary claim limit of \$35,000.00, the landlords have agreed to waive the balance of the unpaid rent to keep the amount of monetary compensation at \$35,000.00.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary award in the amount of \$35,000.00, in full satisfaction of unpaid rent owing from September 2021 to December 2021.

The landlords have also requested to recover the \$100.00 filing fee paid for this application. However, I find that awarding the filing fee would bring the monetary award to \$35,100.00, which is above the \$35,000.00 limit that can be awarded through the Residential Tenancy Branch.

For this reason, the landlords' application to recover the filing fee paid for this application is dismissed without leave to reapply.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant(s). Should the tenant(s) 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 67 of the *Act*, I grant the landlords a Monetary Order in the amount of \$35,000.00 for rent owed from September 2021 to December 2021. The landlords are provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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 utilities with leave to reapply.

I dismiss the landlords' application to recover the filing fee paid for this application without 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 10, 2022

Residential Tenancy Branch