



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 March 6, 2022.

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*?

Notice of Dispute Resolution Proceeding – Direct Request

In this type of matter, the landlord 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 on Direct Requests provides the following requirements:

“After the Notice of Dispute Resolution Proceeding Package has been served to the tenant(s), the landlord must complete and submit to the Residential Tenancy Branch a Proof of Service Notice of Direct Request Proceeding (form RTB-44) for each tenant served.”

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on March 9, 2022, the landlord sent Tenant P.N.L. 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 Receipt 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 March 9, 2022 and are deemed to have been received by Tenant P.N.L. on March 14, 2022, the fifth day after their registered mailing.

I note that the landlord submitted a copy of a Canada Post Customer Receipt containing a tracking number to confirm a package was sent to Tenant L.A.S. on March 9, 2022. However, I find the landlord has not provided a copy of the Proof of Service Notice of Direct Request Proceeding form. In its place, the landlord submitted a second copy of the RTB-44 discussing service of the Direct Request documents to Tenant P.N.L.

I find the landlord has not submitted the documents required to proceed with a Direct Request against Tenant L.A.S. For this reason, I will only consider the portion of the landlord's application naming Tenant P.N.L. 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 landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and Tenant P.N.L., indicating a monthly rent of \$1,200.00, due on the first day of each month for a tenancy commencing on January 1, 2017
- A copy of a Notice of Rent Increase forms showing the rent being increased from \$1,300.00 to the monthly rent amount of \$1,319.50
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 4, 2022, for \$1,319.50 in unpaid rent. The 10 Day Notice provides that Tenant P.N.L. 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 February 20, 2022
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to Tenant P.N.L. by registered mail at 2:06 pm on February 5, 2022
- A copy of a Canada Post receipt containing the tracking number to confirm the 10 Day Notice was sent to Tenant P.N.L. on February 5, 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 February 5, 2022 and is deemed to have been received by Tenant P.N.L. on February 10, 2022, five days after its registered mailing.

I accept the evidence before me that Tenant P.N.L. 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 P.N.L. 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, February 20, 2022.

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

When there have been rent increases, all appropriate Notice of Rent Increase forms must be submitted with the Application for Dispute Resolution to substantiate each stage of the increased rent.

I note that the landlord submitted a copy of a Notice of Rent Increase showing the rent being adjusted from \$1,300.00 to \$1,319.50. However, I find the landlord has not submitted any Notice of Rent Increase forms showing the rent was legally increased from the \$1,200.00 listed in the tenancy agreement to \$1,300.00.

I find I am not able to confirm 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.

I also note that the landlord's monetary claim includes an amount of \$176.40 for unpaid utilities.

In a Direct Request Proceeding, a landlord cannot pursue rent or utilities owed for an amount beyond the amount noted on the 10 Day Notice that was issued to the tenant. I find the 10 Day Notice does not list any amounts owing for unpaid utilities.

For this reason, I cannot hear the portion of the landlord's monetary claim for utilities owing.

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 P.N.L. Should Tenant P.N.L. **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 P.N.L. must be served with **this Order** as soon as possible. Should Tenant P.N.L. 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 landlord's application for a Monetary Order for unpaid rent and 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 30, 2022

Residential Tenancy Branch