



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NADJA HILDEBRAND HOLDCO
INC. and [tenant name suppressed to protect privacy]

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 February 12, 2022.

The landlord submitted a witnessed Proof of Service Notice of Direct Request Proceeding form signed by the tenant which declares that on February 15, 2022, the landlord personally served the tenant the Notice of Dispute Resolution Proceeding - Direct Request.

Based on the written submissions and evidence of the landlord and in accordance with section 89(1) of the *Act*, I find that the Direct Request Proceeding documents were served to the tenant on February 15, 2022.

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

The landlord submitted the following relevant evidentiary material:

- a copy of a residential tenancy agreement which was signed by the landlord and the tenant on August 28, 2021, indicating a monthly rent of \$2,500.00, due on the first day of each month;
- a copy of a December 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated December 30, 2021, for \$4,450.00 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 9, 2022;
- a copy of a January 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated January 14, 2022, for \$6,950.00 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 24, 2022;
- a copy of a second January 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated January 25, 2022, for \$6,950.00 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 February 4, 2022;
- a copy of a witnessed Proof of Service Notice to End Tenancy form signed by the tenant which indicates that the December 10 Day Notice was personally served to the tenant at 10:15am on December 30, 2021;
- a copy of a witnessed Proof of Service Notice to End Tenancy form signed by the tenant which indicates that the 10 Day Notice dated January 14, 2022 was personally served to the tenant at 10:25am on January 14, 2022;
- a copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice dated January 25, 2022 was served to the tenant by “sliding it into the unit under the door” at 10:20am on January 25, 2022; and;
- a copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

Analysis

In this type of matter, the landlord must prove that they served the tenant with the 10 Day Notice in accordance with section 88 of the *Act*.

Section 88 of the *Act* allows for service by either sending the 10 Day Notice to the tenant by mail, by leaving a copy with the tenant, by leaving a copy in the tenant's mailbox or mail slot, attaching a copy to the tenant's door or by leaving a copy with an adult who apparently resides with the tenant.

In the special details section of the Proof of Service Notice to End Tenancy for the 10 Day Notice dated January 25, 2022, the landlord has indicated that they placed the 10 Day Notice dated January 25, 2022 under the door of the rental unit which is not a method of service as indicated above.

For the above reason, I find that the 10 Day Notice dated January 25, 2022 has not been served in accordance with section 88 of the *Act*.

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the 10 Day Notice dated January 14, 2022 was served to the tenant on January 14, 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 24, 2022.

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

I find that the monthly breakdown of rent owing on the Direct Request Worksheet is incomplete as it lists the total owing of \$7,500.00 as unpaid rent for only one month, January 2022. The Direct Request Worksheet must clearly show all months for which the tenant still owes rent in order to substantiate the landlord's claim.

For this reason, the landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

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 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 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 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.

The landlord's application for a Monetary Order for unpaid rent is dismissed 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 08, 2022

Residential Tenancy Branch