



Dispute Resolution Services

Page: 1

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 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 February 9, 2022.

The landlord submitted one signed Proof of Service Notice of Direct Request Proceeding which declares that on February 10, 2022, the landlord served the six tenants the Notice of Dispute Resolution Proceeding - Direct Request by handing the packages to Tenant Q. N.K. The landlord had Tenant Q.N.K. sign the Proof of Service Notice of Direct Request Proceeding to confirm this service.

Based on the written submissions of the landlord and in accordance with sections 89(1) of the *Act*, I find that the Direct Request Proceeding documents were duly served to Tenant Q.N.K. on February 10, 2022.

In accordance with sections 89(2) of the *Act*, I find that the Direct Request Proceeding documents were duly served to the remaining five tenants on February 10, 2022, the day the packages were handed to Tenant Q.N.K., an adult who resides with the tenants.

Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation for unpaid rent and utilities 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 four of the tenants, indicating a monthly rent of \$2,350.00, due on the first day of each month for a tenancy commencing on November 1, 2021
- A copy of a utility bill from the BC Hydro for the rental unit dated December 13, 2021 for \$797.74
- A copy of two utility bills from Fortis for the rental unit dated November 9, 2021 for \$242.98 and December 10, 2021 for \$337.84
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 3, 2022, for \$2,350.00 in unpaid rent and \$798.49 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 16, 2022
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was placed in the tenants' mailbox at 8:00 pm on January 4, 2022
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy. The Direct Request Worksheet noted that \$2,350.00 of the \$2,350.00 rent identified as owing in the 10 Day Notice was paid on January 4, 2022

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 4, 2022 and is deemed to have been received by the tenant on January 7, 2022, three days after its posting.

Section 46(4)(a) of the *Act*, regarding a landlord's notice for non-payment of rent, states that "*within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect.*"

The Direct Request Worksheet indicates that the tenants paid the full rent listed on the 10 Day Notice on January 4, 2022, within the five days granted under section 46(4) of the *Act*.

For this reason, I find that the portion of the 10 Day Notice dated January 3, 2022 relating to unpaid rent is cancelled and of no effect.

I also note that section 46(6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, and issue a 10 Day Notice, if the charges are unpaid more than 30 days after the tenants are given a written demand for them.

The landlord has indicated in their Application for Dispute Resolution that no 30-day demand letter was provided to the tenants which would allow the landlord to treat the utilities as unpaid rent.

I find landlord did not have the authority to include unpaid utilities on the 10 Day Notice. For this reason, the portion of the 10 Day Notice dated January 3, 2022 relating to unpaid utilities is cancelled and of no effect.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice of January 3, 2022, without leave to reapply.

The 10 Day Notice of January 3, 2022 is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice the landlord's application for a Monetary Order for unpaid rent and utilities is dismissed, with leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlord's application for an Order of Possession based on the 10 Day Notice of January 3, 2022, is dismissed without leave to reapply.

The 10 Day Notice of January 3, 2022 is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

I dismiss the landlord's application for a Monetary Order for unpaid rent and utilities, with leave to reapply.

I dismiss the landlord's 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 09, 2022

Residential Tenancy Branch