



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 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 19, 2022.

The landlords submitted a copy of two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on March 4, 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 two Canada Post Customer Receipts containing the tracking numbers to confirm they served the tenants.

Based on the written submissions and evidence of the landlords and in accordance with sections 89(1) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on March 4, 2022 and are deemed to have been received by the tenants on March 9, 2022, the fifth day after they were mailed.

Issues 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 landlord F.O. on February 27, 2021, and the tenants on February 1, 2021, indicating a monthly rent of \$1,800.00, due on the first day of each month for a tenancy commencing on February 20, 2021;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated February 9, 2022, for \$9,000.00 in unpaid rent and \$834.03 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 February 20, 2022;
- a copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants’ door at 8:00pm on February 9, 2022; and;
- a copy of a Direct Request Worksheet showing the rent and utilities owing and paid during the relevant period.

Analysis

I have reviewed all documentary evidence and I find that the tenants were obligated to pay the monthly rent in the amount of \$1,800.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on February 9, 2022 and is deemed to have been received by the tenants on February 12, 2022, three days after it was posted to the door of the rental unit.

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 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 22, 2022.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary award in the amount of \$9,000.00, the amount claimed by the landlords for unpaid rent owing for October 2021 to December 2021, January 2022, and February 2022.

Section 46(6) of the *Act* allows a landlord to treat unpaid utilities as unpaid rent if

- (a) a tenancy agreement requires the tenant to pay utility charges **to the landlord**, and
- (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

I find that the tenancy agreement does not state that the utilities are the responsibility of the tenants and does not specify that the tenants are to pay the utilities to the landlords. For this reason, the monetary portion of the landlords' application concerning unpaid utilities is dismissed, with leave to reapply.

I note that the only monetary award available to landlords by way of the Direct Request process is for unpaid rent and unpaid utilities. As the landlords have also sought a monetary award for matters relating to broken windows in the amount of \$900.00, I would not be able to consider this aspect of the landlords' claim through the Direct Request process.

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 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 sections 67 and 72 of the *Act*, I grant the landlords a Monetary Order in the amount of \$9,100.00 for rent owed for October 2021 to December 2021, January 2022 to February 2022, and for the recovery of the filing fee for this application. 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.

The landlords' application for a monetary order for unpaid utilities is dismissed, with leave to reapply.

The landlords' application for a monetary order for broken windows 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 28, 2022

Residential Tenancy Branch