



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 14, 2022.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on March 22, 2022, the landlord served the tenant the Notice of Dispute Resolution Proceeding - Direct Request in person. The landlord had the tenant sign the Proof of Service Notice of Direct Request Proceeding form to confirm personal service.

Based on the written submissions of the landlord and in accordance with section 89 of the *Act*, I find that the Direct Request Proceeding documents were duly served to the tenant on March 22, 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*?

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 February 4, 2021, indicating a monthly rent of \$760.00, due on the first day of each month for a tenancy commencing on February 15, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the February 10 Day Notice) dated February 28, 2022, for \$760.00 in unpaid rent. The February 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 March 10, 2022
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the February 10 Day Notice was served to the tenant in person at 9:00 am on March 1, 2022
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the March 10 Day Notice) dated March 11, 2022, for \$760.00 in unpaid rent. The March 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 March 21, 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 I find that the tenant was obligated to pay the monthly rent in the amount of \$760.00, as per the tenancy agreement.

In accordance with section 88 of the *Act*, I find that the February 10 Day Notice was duly served to the tenant on March 1, 2022.

I accept the evidence before me that the tenant has failed to pay the February 2022 rent owed in full within the five days granted under section 46(4) of the *Act* and did not dispute the February 10 Day Notice within that five-day period.

Based on the foregoing, I find that the tenant is 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 February 10 Day Notice, March 11, 2022.

In a Direct Request Proceeding, a landlord cannot pursue rent owed for an amount beyond the amount noted on the 10 Day Notice that was issued to the tenant. I find the February 10 Day Notice only lists amounts owing for February 2022.

I note the landlord also submitted a copy of a 10 Day Notice including unpaid rent owing for March 2022. However, I find the landlord has not submitted a copy of a Proof of Service Notice to End Tenancy form or any other documentation to establish that the March 10 Day Notice was served to the tenant.

For this reason, I cannot hear the portion of the landlord's monetary claim for rent owed for March 2022.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$760.00, the amount claimed by the landlord for unpaid rent owing for February 2022.

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 sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$860.00 for rent owed for February 2022 and 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.

I dismiss the landlord's application for a Monetary Order for unpaid rent owing for March 2022 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: April 13, 2022

Residential Tenancy Branch