



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 filed by the Landlord for an order of possession and a monetary order for unpaid rent and to recover the filing fee.

The Landlord named in the application does not match the landlord's name that appears in the tenancy agreement. However, the Landlord submitted a Title Search Print dated February 28, 2022, which indicates he is the registered owner in fee simple of the rental property. Other documents submitted in support of the application include the Landlord's name. Therefore, I find it is more likely than not that the Landlord, as an owner of owner of the rental unit who exercises powers and performs duties under the Act and the tenancy agreement, is a landlord as defined under section 1 of the Act.

The Landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that they served the Tenant with a Notice of Dispute Resolution Proceeding and supporting documents by attaching a copy to the Tenant's door or other noticeable place on March 11, 2022, which service was witnessed by SM.

However, section 89(1) of the Act does not allow for a Notice of Direct Request Proceeding to be given to a tenant by attaching a copy to the tenant's door.

Section 89(2) of the Act does allow for a Notice of Direct Request Proceeding to be given to a tenant by attaching a copy to the tenant's door, only when requesting an order of possession for the landlord.

Further, the Proof of Service Notice of Direct Request Proceeding form completed by the Landlord states: “Do not attach a copy to door or noticeable place if requesting a Monetary Order.”

In this case, the Landlord served the Notice of Direct Request Proceeding by attaching a copy to the Tenant’s door or other noticeable place. As a result, I find I am unable to consider the Landlord’s request for a monetary order for unpaid rent. Therefore, the Landlord’s request for a monetary order for unpaid rent is dismissed with leave to reapply.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the Act?
2. Is the Landlord entitled to recover the filing fee 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 signed on August 2, 2017, indicating a monthly rent in the amount of \$1,350.00 due in installments of \$675.00 paid on the 15th and 30th day of each month, for a tenancy commencing on August 15, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, for \$4,050.00 in unpaid rent (the 10 Day Notice). The Landlord also sought to retain the security deposit held in partial satisfaction of a monetary award, which relief is not available under the Direct Request Process. 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 22, 2022;

- A copy of a Proof of Service Notice to End Tenancy document which indicates the 10 Day Notice was served on the Tenant by attaching a copy to the Tenant's door or other conspicuous place on February 8, 2022, which service was witnessed by SM;
- A copy of an invoice from a process service confirming service of the 10 Day Notice on February 8, 2022;
- A copy of a Direct Request Worksheet showing the rent due and paid during the relevant period.

Analysis

In accordance with sections 88 and 90 of the Act, I find that the Tenant is deemed to have received the 10 Day Notice on February 11, 2022, three days after it was attached on the Tenant's door or other conspicuous place.

I accept the evidence before me that the Tenant failed to pay the rent owed in full and did not dispute the 10 Day Notice within five days after receipt in accordance with section 46(4) of the Act.

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 February 21, 2022, the corrected effective date of the 10 Day Notice, and must vacate the rental unit.

Therefore, I find the Landlord is entitled to an order of possession which will be effective two days after it is served on the Tenant.

Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the application.

Conclusion

The Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply.

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession must be served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$100.00 in recovery of the filing fee. The monetary order must be served on the Tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 1, 2022

Residential Tenancy Branch