



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 submitted signed Proof of Service Notice of Direct Request Proceeding which declares that they served each of the Tenants with a Notice of Dispute Resolution Proceeding and supporting documents by registered mail on March 18, 2022. Photographic images of envelopes addressed to the tenants were submitted in support. The envelopes displayed Canada Post registered mail labels which show the date of purchase and include the tracking numbers. Pursuant to sections 89 and 90 of the Act, I find these documents are deemed to have been received by the Tenants on March 23, 2022, five days after they were sent by registered mail.

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 a monetary order for unpaid rent pursuant to sections 46 and 67 of the Act?
3. 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 signed residential tenancy agreement indicating a monthly rent in the amount of \$2,500.00 due on the 24th day of each month, for a tenancy commencing on April 24, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 1, 2022, for \$2,500.00 in unpaid rent due on February 24, 2022 (the 10 Day Notice). 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 March 15, 2022;
- A copy of a Proof of Service Notice to End Tenancy document confirming service of the 10 Day Notice on the Tenants by leaving a copy in a mailbox at the Tenants' residence on March 1, 2022, which service was witnessed by PX and was supported by a photograph of the document being placed in a mailbox; and
- A copy of a Direct Request Worksheet showing the rent due and paid during the relevant period.

Analysis

I have reviewed all documentary evidence and I find that the Tenants were obligated to pay monthly rent in the amount of \$2,500.00.

In accordance with sections 88 and 90 of the Act, I find that the Tenants are deemed to have received the 10 Day Notice on March 4, 2022, three days after it was left in a mailbox at the Tenants' residence.

I find the 10 Day Notice complies with the form and content requirements of section 52 of the Act.

I accept the evidence before me that the Tenants 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 Tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on March 14, 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 Tenants.

I also find the Landlord has demonstrated an entitlement to a monetary award in the amount of \$2,500.00 for unpaid rent to March 23, 2022. Claims under the Direct Request process are limited to the period indicated in the 10 Day Notice. The Landlord remains at liberty to reapply for a monetary order for any additional unpaid rent or other losses.

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

Further, I note the Landlord's application states: "The tenants got a one- month free rent between Jan 24 - Feb 23 because the owner issued a 2-month notice to end tenancy due to landlord use of the property. The tenant was supposed to pay \$2500 on Feb 24, 2022 since they have not moved out yet and the previous hearing for dispute resolution was set on April 25, 2022." However, nothing in this decision is intended to limit or restrict the authority of an arbitrator to determine the rights and obligations of the parties under the Act, including a tenant's right to compensation when a landlord issues a Two Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 49 of the Act.

Conclusion

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenants. The order of possession must be served on the Tenants. 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 \$2,600.00 for unpaid rent and in recovery of the filing fee. The monetary order must be served on the Tenants. 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 8, 2022

Residential Tenancy Branch