



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAHIL DEVELOPMENTS
and [tenant name suppressed to protect privacy]

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 29, 2022.

The landlord submitted a copy of two witnessed Proof of Service Notice of Direct Request Proceeding forms which declare that on March 30, 2022, the landlord served each tenant the Notice of Dispute Resolution Proceeding - Direct Request by posting them to the door of the rental unit.

Based on the written submissions and evidence of the landlord and in accordance with sections 89(2) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on March 30, 2022 and are deemed to have been received by the tenants on April 2, 2022, the third day after they were posted to the door.

Issues 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

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 on February 3, 2021 and the tenants on February 1, 2021, indicating a monthly rent of \$2,500.00, due on the first day of each month for a tenancy commencing on February 1, 2021;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated February 5, 2022, for \$6,100.00 in unpaid rent. 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 15, 2022;
- a copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenants by registered mail on February 5, 2022. The landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm they served the tenants; and;
- a copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

Analysis

I note that the address indicated on the 10 Day Notice from which the tenants must move is slightly different than the tenants’ address on the tenancy agreement, the Application for Dispute Resolution and all other documents submitted with the landlord’s application. I have amended this address to match all other information provided for the address as per section 68(1) of the *Act* as it is reasonable to do so under the circumstances.

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 February 5, 2022 and is deemed to have been received by the tenants on February 10, 2022, five days after it was mailed.

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 20, 2022.

Therefore, I find that the landlord is entitled to an Order of Possession.

In this type of matter, the landlord must prove they served each tenant with the Notice of Dispute Resolution Proceeding – Direct Request and all documents in support of the application in accordance with section 89 of the *Act*.

Section 89(1) of the *Act* does not allow for the Notices of Dispute Resolution Proceeding - Direct Request to be given to the tenants by attaching a copy to a door at the address at which the tenants reside.

Section 89(2) of the *Act* does allow for the Notices of Dispute Resolution Proceeding - Direct Request to be given to the tenants by attaching a copy to a door at the address at which the tenants reside, only when considering an Order of Possession for the landlord.

I find that the landlord has served the Notices of Dispute Resolution Proceeding - Direct Request to the door of the rental unit at which the tenants reside, and for this reason, the monetary portion of the landlord's application for unpaid rent is dismissed, with leave to reapply.

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(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 section 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlord is 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 landlord's application for a Monetary Order for unpaid rent 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: May 04, 2022

Residential Tenancy Branch