



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 landlords 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 landlords on May 13, 2022.

The landlords provided a statement indicating that they did not serve tenant P.N. or tenant Y.K. the Notices of Dispute Resolution Proceeding - Direct Request. The landlords submitted duplicate copies of the witnessed Proof of Service Notice of Direct Request Proceeding form which indicates that tenant S.K. was served the Notice of Dispute Resolution Proceeding - Direct Request on May 29, 2022.

I find that I cannot confirm service of the Direct Request Proceeding documents to tenant P.N. or tenant Y.K., which is a requirement of the Direct Request Process. For this reason, I will only proceed with the portion of the landlords' application naming tenant S.K. as a respondent.

The landlords submitted a copy of a witnessed Proof of Service Notice of Direct Request Proceeding form which declares that on May 29, 2022, the landlords served tenant S.K. the Notice of Dispute Resolution Proceeding - Direct Request by posting it to the door of the rental unit.

Based on the written submissions and evidence of the landlords and in accordance with sections 89(2) and 90 of the *Act*, I find that the Direct Request Proceeding documents

were served on May 29, 2022 and are deemed to have been received by tenant S.K. on June 1, 2022, the third day after they were posted to the door.

Issues to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent 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 A.M., landlord Sa.M., and tenant S.K. on July 13, 2021, indicating a monthly rent of \$2,050.00, due on the first day of each month for a tenancy commencing on August 1, 2021;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated May 2, 2022, for \$2,050.00 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 May 12, 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 11:00pm on May 2, 2022; and;
- a copy of a Direct Request Worksheet showing the rent owing during the relevant period.

Analysis

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 May 2, 2022 and is deemed to have been received by tenant S.K. on May 5, 2022, three days after it was posted to the door of the rental unit.

I accept the evidence before me that tenant S.K. has 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 tenant S.K. 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 10 Day Notice, May 15, 2022.

Therefore, I find that the landlords are entitled to an Order of Possession.

In this type of matter, the landlords must prove they served tenant S.K. 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 Notice of Dispute Resolution Proceeding - Direct Request to be given to the tenant by attaching a copy to a door at the address at which the tenant resides.

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

I find that the landlords have served the Notice of Dispute Resolution Proceeding - Direct Request to the door of the rental unit at which tenant S.K. resides, and for this reason, the monetary portion of the landlords' application for unpaid rent naming tenant S.K. is dismissed, with leave to reapply.

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 tenant S.K. Should tenant S.K. or **any other occupant** 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 landlords a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlords are provided with this Order in the above terms and tenant S.K. must be served with **this Order** as soon as possible. Should tenant S.K. 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 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: June 21, 2022

Residential Tenancy Branch