



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1149365 BC LTD
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 May 3, 2022.

Notice of Dispute Resolution Proceeding – Direct Request

In this type of matter, the landlord must prove they served the 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 of the *Act* provides that a Notice of Dispute Resolution Proceeding - Direct Request may be served “*by any other means of service provided for in the regulations.*”

Section 43(2) of the *Residential Tenancy Regulation* provides that documents “*may be given to a person by emailing a copy to an email address provided as an address for service by the person.*”

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on May 11, 2022, the landlord sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request by e-mail. The landlord provided a copy of the outgoing e-mail sent to the tenant containing the Direct Request documents as attachments. The landlord also submitted a reply e-mail from the tenant dated May 11, 2022.

Section 71(2)(c) of the *Act* enables me to make an order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*.

The landlord sent the Direct Request documents to the tenant by e-mail. I find the landlord has not submitted any evidence to demonstrate that the tenant provided their e-mail address for service of documents, as required by section 43(2) of the *Regulation*.

However, I am satisfied that the tenant received the Notice of Dispute Resolution Proceeding – Direct Request on the day the tenant replied to the landlord's e-mail.

For this reason, and in accordance with section 71(2)(c) of the *Act*, I find that the tenant has been served with the Notice of Dispute Resolution Proceeding – Direct Request on May 11, 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

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 and the tenant on May 29, 2021, indicating a monthly rent of \$1,400.00, due on the first day of each month for a tenancy commencing on June 1, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 7, 2022, for \$2,800.00 in unpaid rent. 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 April 23, 2022
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenant by registered mail at 5:45 pm on April 7, 2022
- A copy of a Canada Post receipt containing the tracking number to confirm the 10 Day Notice was sent to the tenant on April 7, 2022

- A Direct Request Worksheet and ledger showing the rent owing and paid during the relevant portion of this tenancy. The ledger indicates that a payment of \$500.00 was made on April 28, 2022

Analysis

I have reviewed all documentary evidence and I find that the tenant was obligated to pay the monthly rent in the amount of \$1,400.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on April 7, 2022 and is deemed to have been received by the tenant on April 12, 2022, five days after its registered mailing.

I accept the evidence before me that the tenant 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 is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, April 23, 2022.

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

The landlord is requesting compensation for two full months' rent owing for March 2022 and April 2022, for a total of \$2,800.00. However, I find the ledger indicates that the tenant made a payment of \$500.00 towards this amount on April 28, 2022. I also find this payment is not listed on the Direct Request Worksheet or the Application for Dispute Resolution by Direct Request.

I find I am not able to confirm the precise amount of rent owing and for this reason the landlord's application for a Monetary Order 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. 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 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 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 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 08, 2022

Residential Tenancy Branch