



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 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 June 17, 2022.

The landlord provided two statements indicating that on June 21, 2022, the landlord sent each tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlord provided a copy of two Canada Post Customer Receipts containing the tracking numbers, a photograph of two envelopes addressed to the tenants, and two photographs of the contents of the packages to confirm this service.

Based on the written submissions and evidence of the landlord and in accordance with sections 89(1) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on June 21, 2022 and are deemed to have been received by the tenants on June 26, 2022, the fifth day after they were mailed.

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

The landlord submitted the following relevant evidentiary material:

- a copy of a residential tenancy agreement which was signed by the landlord and the tenants on May 19, 2021, indicating a monthly rent of \$3,600.00, due on the first day of each month for a tenancy commencing on July 1, 2021;
- a copy of a May 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “May 10 Day Notice”) dated May 13, 2022, for \$3,600.00 in unpaid rent and \$519.00 in unpaid utilities. The May 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 23, 2022;
- a landlord statement that indicates that the May 10 Day Notice was sent to the tenants by registered mail on May 13, 2022. The landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service;
- a copy of a June 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “June 10 Day Notice”) dated June 2, 2022, for \$7,200.00 in unpaid rent and \$720.00 in unpaid utilities. The June 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;
- a copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that a copy of the June 10 Day Notice was posted to the tenant’s door, a copy was left in the tenants’ mailbox, and a copy was sent to the tenants by registered mail on June 11, 2022; and;
- a copy of a Direct Request Worksheet showing the rent and utilities owing during the relevant period.

Analysis

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

In order to be effective, a notice to end a tenancy must be in writing and must
(a) be signed and dated by the landlord or tenant giving the notice,
(b) give the address of the rental unit,
*(c) **state the effective date of the notice...**and*
(e) when given by a landlord, be in the approved form...

I have reviewed all documentary evidence and I find that there is no effective date (the day when the tenants must move out of or vacate the site) on the June 10 Day Notice. I find that this omission invalidates the June 10 Day Notice as the landlord has not complied with the provisions of section 52 of the *Act*. It is possible to amend an incorrect date on the 10 Day Notice, but the *Act* does not allow an adjudicator to input a date where none is written.

Therefore, I dismiss the landlord's application to obtain an Order of Possession based on the 10 Day Notice dated June 2, 2022, without leave to reapply.

The 10 Day Notice dated June 2, 2022, is cancelled and of no force or effect.

For the same reasons identified in the June 10 Day Notice the landlord's application for a Monetary Order for unpaid rent owing for June 2022 is dismissed, with leave to reapply.

The landlord has also provided a copy of a May 10 Day Notice. In accordance with sections 88 and 90 of the *Act*, I find that the May 10 Day Notice was served on May 13, 2022 and is deemed to have been received by the tenants on May 18, 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 May 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 May 10 Day Notice, May 28, 2022.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$3,600.00, the amount claimed by the landlord for unpaid rent owing for May 2022.

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 sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$3,700.00 for rent owed for May 2022 and 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 an Order of Possession based on the 10 Day Notice dated June 2, 2022, is dismissed, without leave to reapply.

The 10 Day Notice dated June 2, 2022, is cancelled and of no force or effect.

I dismiss the landlord's application for a Monetary Order for unpaid rent owing for June 2022, 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: July 12, 2022

Residential Tenancy Branch