



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 June 28, 2022.

The landlords submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on July 15, 2022, the landlord sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing.

Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on July 15, 2022 and are deemed to have been received by the tenant on July 20, 2022, the fifth day after their registered mailing.

Issue(s) 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 the landlords and the tenant on September 5, 2017, indicating a monthly rent of \$700.00, due on the first day of each month for a tenancy commencing on October 1, 2017
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 15, 2022, for \$3,000.00 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 July 31, 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 4:44 pm on June 15, 2022
- A copy of a Canada Post Customer Receipt containing the tracking number to confirm the 10 Day Notice was sent to the tenant on June 15, 2022
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

Analysis

Section 68 of the *Act* allows for the 10 Day Notice to be amended when it is reasonable to do so. I find that the date of the 10 Day Notice (July 15, 2022) is for a date that had not occurred at the time that the 10 Day Notice was issued to the tenant (June 15, 2022). For this reason, I have amended the date of the 10 Day Notice to reflect the day it was sent to the tenant by registered mail.

In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on June 15, 2022 and is deemed to have been received by the tenant on June 20, 2022, three days after its posting.

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, July 31, 2022.

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

I note that the amount of rent on the tenancy agreement (\$700.00) does not match the monthly rent listed on the Direct Request Worksheet (\$750.00).

Section 42 (3) of the *Act* states that “A notice of a rent increase must be in the approved form.” I find the landlords have not submitted a copy of any Notice of Rent Increase forms to demonstrate the rent was legally increased in accordance with the *Act*.

I find I am not able to confirm the amount of rent owing and for this reason the landlords’ application for a Monetary Order for unpaid rent 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 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 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 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 landlords’ 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: August 09, 2022

Residential Tenancy Branch