



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prospero International Realty
Inc and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR

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 and to obtain monetary compensation for unpaid rent.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the landlord on July 21, 2022.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on July 22, 2022, the landlord sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing.

Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on July 22, 2022 and are deemed to have been received by the tenant on July 27, 2022, the fifth day after their registered mailing.

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*?

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 a landlord who is not the applicant and the tenant on August 1, 2018, indicating a monthly rent of \$1,750.00, due on the first day of each month for a tenancy commencing on August 1, 2018
- A copy of a management agreement showing the authorization of management responsibilities for the landlord who is applying for dispute resolution
- A copy of a Notice of Rent Increase forms showing the rent being increased from \$1,793.00 to the monthly rent amount of \$1,815.00
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 14, 2022, for \$5,492.00 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 June 27, 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 tenant's door at 1:30 pm on June 15, 2022
- A Direct Request Worksheet and ledger showing the rent owing and paid during the relevant portion of this tenancy

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 June 15, 2022 and is deemed to have been received by the tenant on June 18, 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 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, June 28, 2022.

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

Part 3, section 41 of the *Act* establishes that "a landlord must not increase rent except in accordance with this Part."

The landlord submitted a copy of a Notice of Rent Increase showing the rent being adjusted from \$1,793.00 to \$1,815.00. However, the landlord states that due to the management change, they do not have copies of the previously issued Notices of Rent Increase.

In an *ex-parte* Direct Request Proceeding, I find I am not able to confirm whether the rent was legally increased from \$1,750.00 to \$1,793.00. For this reason, the landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

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.

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: August 19, 2022

Residential Tenancy Branch