



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Top Producers Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPU-DR, MNU-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 and utilities, to obtain monetary compensation for unpaid rent and utilities, 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 August 18, 2022.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on August 18, 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 August 18, 2022 and are deemed to have been received by the tenant on August 23, 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 and utilities pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent and utilities 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 February 1, 2022, indicating a monthly rent of \$1,827.00, due on the first day of each month for a tenancy commencing on January 15, 2022. The tenancy agreement also indicates the tenant is responsible for 60% of the hydro, gas, and city utilities
- A copy of a utility bill from Fortis BC for the rental unit dated April 5, 2022, for \$125.52, indicating the tenant's portion is \$75.31
- A copy of an e-mail demand letter from the landlord to the tenant, dated April 14, 2022, requesting payment of utilities in the amount of \$75.31
- A copy of a Proof of Service Written Demand to Pay for Utilities form which indicates that the demand letter was sent to the tenant by e-mail at 3:26 pm on April 5, 2022
- A copy of an Address for Service form which was signed by the tenant on February 1, 2022, indicating the tenant agreed to receive documents by e-mail
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated July 5, 2022, for \$2,354.00 in unpaid rent and \$72.31 in unpaid utilities. 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 18, 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 12:30 pm on July 5, 2022
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy. The Direct Request Worksheet noted that \$3.00 of the \$75.31 utilities identified as owing in the 10 Day Notice was paid on April 2, 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 \$1,827.00, as per the tenancy agreement. I also

find the tenant was obligated to pay 60% of the utilities to the landlord, as per the tenancy agreement.

In accordance with sections 43(1) and 44 of the *Residential Tenancy Regulation*, I find the utility demand letter was served on April 14, 2022 and is deemed to have been received by the tenant on April 17, 2022, three days after it's e-mailing.

I find that more than thirty days have passed since the tenant received the utility demand letter. In accordance with section 46(6) of the *Act*, I find that the landlord had the authority to include the utilities owing from April 5, 2022, on the 10 Day Notice.

In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on July 5, 2022 and is deemed to have been received by the tenant on July 8, 2022, three days after its posting.

I accept the evidence before me that the tenant has failed to pay the rent and utilities 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 18, 2022.

In a Direct Request Proceeding, a landlord cannot pursue rent or utilities owed for an amount beyond the amount noted on the 10 Day Notice that was issued to the tenant.

I find the 10 Day Notice only lists rent amounts owing for June 2022 and July 2022. For this reason, I cannot hear the portion of the landlord's monetary claim for rent owed for August 2022.

I also find the 10 Day Notice only lists unpaid utilities from the April 5, 2022, Fortis BC utility bill. For this reason, I cannot hear the portion of the landlord's claim for utilities owed for subsequent utility bills.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$2,426.31, the amount claimed by the landlord for unpaid rent owing for June 2022 and July 2022 and for unpaid utilities owing from April 5, 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. 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 sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2,526.31 for rent owed for June 2022 and July 2022, for utilities owing from April 5, 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 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 balance of the landlord's application for a Monetary Order for unpaid rent and utilities 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: September 13, 2022

Residential Tenancy Branch