



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-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.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the landlord on July 20, 2022.

The landlord submitted a copy of a witnessed Proof of Service Notice of Direct Request Proceeding form which declares that on August 10, 2022, the landlord served the tenant the Notice of Dispute Resolution Proceeding - Direct Request by posting it to the door of the rental unit.

Based on the written submissions and evidence of the landlord and in accordance with sections 89(2) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on August 10, 2022 and are deemed to have been received by the tenant on August 13, 2022, three days after they were posted to the door of the rental unit.

Issue to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 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 March 21, 2022, indicating a monthly rent of \$2,800.00, due on the first day of each month for a tenancy commencing on April 1, 2022;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated July 11, 2022, for \$2,400.00 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 21, 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 e-mail and by text message on July 11, 2022. The landlord submitted a copy of text messages exchanged between the landlord and the tenant dated July 11, 2022 to confirm the text message service; and;
- a copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

Analysis

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*.

I find that the landlord sent the 10 Day Notice to the tenant by text message, which is not a method of service permitted under section 88 of the *Act*. However, I am satisfied that the tenant received the 10 Day Notice on the day the tenant replied to the landlord’s text message.

For this reason, and in accordance with section 71(2)(c) of the *Act*, I find that the tenant has been served with the 10 Day Notice on July 11, 2022.

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 21, 2022.

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

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.

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 06, 2022

Residential Tenancy Branch