Dispute Resolution Services

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 August 16, 2022.

The landlord submitted a copy of a Proof of Service Notice of Direct Request Proceeding form which declares that on September 2, 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 they served the tenant.

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 September 2, 2022 and are deemed to have been received by the tenant on September 7, 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

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 December 1, 2017, indicating a monthly rent of $860.00, due on the first day of each month for a tenancy commencing on December 1, 2017;

- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated August 3, 2022, for $590.00 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 August 16, 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 4:57pm on August 3, 2022;

- a copy of a tenant ledger dated August 15, 2022 showing monies owed; and;

- a copy of a Direct Request Worksheet with an attached addendum showing the rent owing during the relevant period.

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 August 3, 2022 and is deemed to have been received by the tenant on August 6, 2022, three days after it was posted to the door of the rental unit.

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, August 16, 2022.

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

I note that the amount of rent on the tenancy agreement does not match the amount of rent being claimed on the 10 Day Notice. I find that there is no tenant rent contribution letter or any other documentation to confirm the current monthly rent amount.

I also find that the tenant ledger dated August 15, 2022 submitted by the landlord includes parking fees and I cannot determine what portion of the landlord's claim is comprised of unpaid rent and what portion is comprised of unpaid parking fees.

I find that I cannot confirm the precise amount of rent owing and for this reason, the landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

I note that the only monetary award available to a landlord by way of the direct request process is for unpaid rent and unpaid utilities. As the landlord has also sought a monetary award for matters relating to a parking fee in the amount of $20.00 per month, I would not be able to consider this aspect of the landlord's claim through the direct request process.

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 section 72 of the *Act*, I grant the landlord a Monetary Order in the amount of $100.00 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.

The landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

The landlord's application for a Monetary Order for unpaid parking fees is dismissed 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 28, 2022

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Residential Tenancy Branch