



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 landlords 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 landlords on September 21, 2022.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent and utilities pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent and utilities 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*?

Notice of Dispute Resolution Proceeding – Direct Request

In this type of matter, the landlords must prove they served the tenants with the Notice of Dispute Resolution Proceeding– Direct Request and all documents in support of the application in accordance with section 89 of the *Act*.

Section 89(1) of the *Act* does not allow for the Notice of Dispute Resolution Proceeding - Direct Request to be given to the tenant by leaving a copy with an adult who resides with the tenant.

Section 89(2) of the *Act* does allow for the Notice of Dispute Resolution Proceeding - Direct Request to be given to the tenant by leaving a copy with an adult who resides with the tenant, only when considering an Order of Possession for the landlord.

The landlords submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on September 23, 2022, the landlords served each tenant a Notice of Dispute Resolution Proceeding - Direct Request package by handing both sets of documents to Tenant R.P. The landlords had a witness sign the Proof of Service Notice of Direct Request Proceeding form to confirm this service.

Based on the written submissions of the landlord and in accordance with section 89(1) of the *Act*, I find that the Direct Request Proceeding documents were duly served to Tenant R.P. on September 23, 2022.

In accordance with section 89(2) of the *Act*, I find that the Direct Request Proceeding documents were duly served to Tenant M.S.B. on September 23, 2022.

I find that the landlords have served the Notice of Dispute Resolution Proceeding - Direct Request to Tenant M.S.B. by leaving a copy with Tenant R.P., an adult who resides with Tenant M.S.B.

For this reason, the portion of the landlords' application for a Monetary Order for unpaid rent owing from February 2022 to August 2022, naming Tenant M.S.B. as a respondent, is dismissed, without leave to reapply.

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 tenants, indicating a monthly rent of \$1,850.00, due on the first day of each month for a tenancy commencing on January 15, 2020
- A copy of a demand letter from the landlords to the tenants, dated September 1, 2022, requesting payment of utilities in the amount of \$1,531.87
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 30, 2022, for \$4,883.88 in unpaid rent and \$1,438.51 in unpaid utilities. The 10 Day Notice provides that the tenants 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 September 11, 2022
- A copy of a witnessed Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities form which indicates that the 10 Day Notice and the utility demand letter were served to the tenants in person at 3:30 pm on September 1, 2022

- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

Analysis

I have reviewed all documentary evidence and I find that the tenants were obligated to pay the monthly rent in the amount of \$1,850.00, as per the tenancy agreement.

In accordance with section 88 of the *Act*, I find that the 10 Day Notice was duly served to the tenants on September 1, 2022.

I accept the evidence before me that the tenants have 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 tenants are 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, September 11, 2022.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. I find that the landlords served the demand letter the same day as the 10 Day Notice and that not enough time has passed to allow the landlords to treat the unpaid utilities as unpaid rent.

For this reason, the monetary portion of the landlords' application concerning unpaid utilities is dismissed, with leave to reapply.

I also note that, in a Direct Request Proceeding, a landlord cannot pursue rent 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 amounts owing from February 2022 to August 2022.

For this reason, I cannot hear the portion of the landlords' monetary claim for rent owed for September 2022.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary award in the amount of \$4,883.88, the amount claimed by the landlords for unpaid rent owing from February 2022 to August 2022.

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(s). Should the tenant(s) 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 landlords a Monetary Order in the amount of \$4,983.88 for rent owed from February 2022 to August 2022 and for the recovery of the filing fee for this application. The landlords are provided with this Order in the above terms and Tenant R.P. must be served with **this Order** as soon as possible. Should Tenant R.P. 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 portion of the landlords' application for a Monetary Order for unpaid rent owing from February 2022 to August 2022, naming Tenant M.S.B. as a respondent, without leave to reapply.

I dismiss the landlords' application for a Monetary Order for unpaid rent owing for September 2022 with leave to reapply.

I dismiss the landlords' application for a Monetary Order for unpaid 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: October 25, 2022

Residential Tenancy Branch