



Dispute Resolution Services

Page: 1

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 landlords 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 landlords on September 6, 2022.

The landlords submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on September 7, 2022, the landlords sent each tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipts containing the tracking numbers to confirm these mailings.

Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on September 7, 2022 and are deemed to have been received by the tenants on September 12, 2022, the fifth day after their registered mailing.

Issue(s) to be Decided

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

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

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 on September 4, 2015, indicating a monthly rent of \$1,200.00, due on the first day of each month for a tenancy commencing on October 1, 2015
- A copy of three Notice of Rent Increase forms showing the rent being increased from \$1,200.00 to the monthly rent amount of \$1,319.50
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 8, 2022, for \$1,319.50 in unpaid rent. 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 August 22, 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 tenants' door at 10:14 am on August 8, 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 in accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on August 8, 2022 and is deemed to have been received by the tenants on August 11, 2022, three days after its posting.

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, August 22, 2022.

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

Section 41 of the *Act* establishes that a landlord may impose a rent increase only up to an amount calculated in accordance with the regulations, ordered by an Arbitrator, or agreed to by the tenant.

I find that the landlords have raised the rent from \$1,200.00 to \$1,250.00 in 2018. In 2018, the maximum allowable increase in accordance with the regulations was 4.0%. I find that 4.0% of \$1,200.00 is \$48.00; however, the landlords increased the rent by \$50.00. Therefore, I find that the landlords have not increased the rent for 2018 in accordance with the regulations.

I also find that the landlords have raised the rent from \$1,250.00 to \$1,300.00 in 2019. In 2019, the maximum allowable increase in accordance with the regulations was 2.5%. I find that 2.5% of \$1,250.00 is \$31.25; however, the landlords increased the rent by \$50.00. Therefore, I find that the landlords have not increased the rent for 2019 in accordance with the regulations.

I also find that the landlords have not submitted any evidence to establish whether the landlords received orders from an Arbitrator or the tenants' written consent to increase the rent above the maximum calculated in accordance with the regulations.

I find that I am not able to confirm the precise amount of the monthly rent owing and for this reason the landlords' application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

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 section 72 of the *Act*, I grant the landlords a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlords are provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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 landlords' 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: October 05, 2022

Residential Tenancy Branch