

DECISION

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 the landlord's Application for Dispute Resolution (Application) for:

- an Order of Possession for unpaid rent and utilities pursuant to sections 46 and 55 of the Act
- a Monetary Order for unpaid rent and utilities pursuant to section 67 of the Act (\$3,197.83)
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act (\$100.00)

Service of Notice of Dispute Resolution Proceeding - Direct Request

The landlord submitted a copy of a Proof of Service Notice of Direct Request Proceeding form which declares that on October 20, 2022 they sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) 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 service. In accordance with sections 89(1) and 90 of the Act and based on the written submissions and evidence of the landlord:

- I find that on October 20, 2022, the landlord sent the Proceeding Package to the tenant by registered mail, and it was deemed to have been received by the tenant on October 25, 2022, the fifth day after it was mailed.

Issues to be decided

Is the landlord entitled to an Order of Possession based on unpaid rent and utilities?

Is the landlord entitled to a Monetary Order for unpaid rent and utilities? (\$3,197.83)

Is the landlord entitled to recover the filing fee for this application from the tenant? (\$100.00)

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 evidentiary material:

- a copy of a residential tenancy agreement which was signed by the tenant on May 25, 2022, indicating a monthly rent of \$1,600.00, due on the first day of the month for a tenancy commencing on June 1, 2022;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated September 1, 2022, for \$1,600.00 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 September 10, 2022;
- a copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice served to the tenant by leaving a copy in the tenant's mail slot at 6:00 pm on September 1, 2022; and;
- a copy of a Direct Request Worksheet showing the rent and utilities owing during the relevant period.

Analysis

Is the landlord entitled to an Order of Possession based on unpaid rent and/or utilities?

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy pursuant to section 46(5) of the Act.

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 September 1, 2022 and is deemed to have been received by the tenant on September 4, 2022, three days after it was left in the tenant's mail slot.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,600.00, as per the tenancy agreement.

I accept the evidence before me that the tenant has failed to pay the unpaid 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 sections 46(5) and 53(2) of the Act to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, September 14, 2022.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the Act.

Is the landlord entitled to a Monetary Order for unpaid rent and/or utilities?

Section 26 of the Act requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Based on the evidence before me, I find that the landlord has established a claim for unpaid rent owing for August 2022.

Therefore, I find the landlord is entitled to a monetary award in the amount of \$1,600.00, the amount claimed by the landlord, for unpaid rent owing for August 2022.

In a Direct Request Proceeding, a landlord cannot pursue rent owed for a period beyond the date on which the Notice was issued to the tenant. The 10 Day Notice was issued to the tenant on September 1, 2022. Therefore, within the purview of the Direct Request process, I cannot hear the monetary portion of the landlord's application for rent owed for October 2022.

Section 46(6) of the Act allows a landlord to treat unpaid utilities as unpaid rent if

- (a) a tenancy agreement requires the tenant to pay utility charges **to the landlord**, and
- (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

I find that the tenancy agreement states that the utilities are not included in the rent. However, the agreement does not specify whether the tenant is to pay the utilities to the landlord or put the utilities in their own name.

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

Is the landlord entitled to recover the filing fee for this application from the tenant?

As the landlord was partially successful in their 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 (2) days after service of this Order on the tenant**. Should the tenant or anyone on the premises 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 **\$1,700.00** for rent owed for August 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.

The landlord's application for a Monetary Order for unpaid rent owing for October 2022 is dismissed, with leave to reapply.

The landlord's application for a Monetary Order for unpaid utilities 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: November 24, 2022

Residential Tenancy Branch