

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 based on unpaid rent pursuant to sections 46 and 55 of the Act
- a Monetary Order for unpaid rent pursuant to section 67 of the Act (\$6,000.00)
- 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 two Proof of Service Notice of Direct Request Proceeding forms which declare that on October 5, 2022 they sent each tenant the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) by registered mail to the rental unit. The landlord provided a copy of two Canada Post Customer Receipts containing the tracking numbers 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 the landlord sent the Proceeding Packages to the tenants by registered mail on October 5, 2022 and are deemed to have been received by the tenants on October 10, 2022, the fifth day after they were mailed.

Issues to be decided

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

Is the landlord entitled to a Monetary Order for unpaid rent? (\$6,000.00)

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

Background and Evidence

The landlord submitted the following evidentiary material:

- a copy of a residential tenancy agreement which names a landlord who is not the applicant and signed by tenant A.O., indicating a monthly rent of \$2,000.00, due on the 7th 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 12, 2022, for \$6,000.00 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 September 26, 2022;
- a copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenants by registered mail on September 12, 2022. The landlord provided a copy of two Canada Post Customer receipts containing the tracking numbers to confirm this service;
- a copy of a management agreement showing that the applicant is the agent for the landlord; and;
- a copy of a Direct Request Worksheet showing the rent owing during the relevant period.

Analysis

Paragraph 12 (1) (b) of the Residential Tenancy Regulation establishes that a tenancy agreement is required to be “signed and dated by both the landlord and the tenant.”

I find that tenant C.M. has not signed the tenancy agreement, which is a requirement of the direct request process. For this reason, the portion of the landlord’s application against tenant C.M. is dismissed without leave to reapply.

I have reviewed all documentary evidence and I find that tenant A.O. has signed the tenancy agreement and was obligated to pay the monthly rent in the amount of \$2,000.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on September 12, 2022 and is deemed to have been received by tenant A.O. on September 17, 2022, five days after it was mailed.

I accept the evidence before me that tenant A.O. 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 tenant A.O. 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 27, 2022.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award against tenant A.O. in the amount of \$6,000.00, the amount claimed by the landlord for unpaid rent owing for July 2022 to September 2022.

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 (2) days after service of this Order on tenant A.O.** Should tenant A.O. **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 **\$6,100.00** for rent owed for July 2022 to September 2022, and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and tenant A.O. must be served with **this Order** as soon as possible. Should tenant A.O. 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 landlord's application for a Monetary Order naming tenant C.M. as a respondent without 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 8, 2022

Residential Tenancy Branch