

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/or utilities pursuant to sections 46 and 55 of the Act
- a Monetary Order for unpaid rent and/or utilities pursuant to section 67 of the Act (\$2,320.14)
- 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 signed Proof of Service Landlord's Notice of Direct Request Proceeding which declares that the tenant was served with the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) in accordance with section 89 of the Act. The landlord 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 90 of the Act:

- I find that Tenant O.D. was served on September 8, 2022, by posting to the door, and that the Proceeding Package is deemed to have been received on September 11, 2022, the third day after its posting.

Issue(s) to be decided

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

Is the landlord entitled to a Monetary Order for unpaid rent and/or utilities? (\$2,320.14)

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 landlord and the tenant, indicating a current monthly rent of \$900.00, due on the first day of the month for a tenancy commencing on August 6, 2021;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 5, 2022, for \$900.00 in unpaid rent and \$1,420.14 in unpaid utilities. 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 15, 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 1:30 pm on August 5, 2022; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

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

Section 46 of the Act provides that a landlord may give notice to end a tenancy if the rent is unpaid on any day after the rent is due. If utility charges are unpaid more than 30 days after a written demand for payment, a landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

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(s) do 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).

I have reviewed all documentary evidence and I find that the tenant was obligated to pay the monthly rent in the amount of \$900.00, and the utilities 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 August 5, 2022 and is deemed to have been received by the tenant on August 8, 2022, three days after its posting.

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, August 18, 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?

In this type of matter, the landlord must prove they served the tenant 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 attaching a copy to a door at the address at which the tenant resides.

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

I find that the landlord has served the Notice of Dispute Resolution Proceeding - Direct Request to the door of the rental unit at which the tenant resides, and for this reason, I cannot consider the monetary portion of the landlord's application.

Therefore, the landlord's application for a Monetary Order for unpaid rent and/or utilities pursuant to section 67 of the Act 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(s)**. Should the tenant(s) 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 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(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.

The landlord's Application for a Monetary Order for unpaid rent and/or utilities pursuant to section 67 of the Act 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 1, 2022

Residential Tenancy Branch