

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 landlords' 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 (\$7,000.00)
- 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 landlords submitted one signed Proof of Service Landlord's Notice of Direct Request Proceeding which declares that the tenants were served with the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) in accordance with section 89 of the Act. The applicants provided a copy of two envelopes containing the Canada Post tracking numbers to confirm this service. Based on the written submissions of the landlords and in accordance with section 90 of the Act:

- I find that Tenant D.L. was served on September 22, 2022, by registered mail, and is deemed to have received the Proceeding Package on September 27, 2022, the fifth day after the registered mailing.
- I find that Tenant C.S. was served on September 22, 2022, by registered mail, and is deemed to have received the Proceeding Package on September 27, 2022, the fifth day after the registered mailing.

Issue(s) to be decided

Are the landlords entitled to an Order of Possession based on unpaid rent?

Are the landlords entitled to a Monetary Order for unpaid rent? (\$7,000.00)

Are the landlords 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 landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords on May 30, 2022, and the tenants on May 28, 2022, indicating a monthly rent of \$3,500.00, due on the first day of the month for a tenancy commencing on May 28, 2022;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 4, 2022, for \$3,500.00 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 August 14, 2022
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants' door, sent by e-mail, sent by text, and sent by Facebook Messenger on April 8, 2022;
- A copy of a Facebook Messenger conversation in which the landlords sent the 10 Day Notice and the tenants replied to the message on August 4, 2022
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

Are the landlords entitled to an Order of Possession based on unpaid rent?

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 I find that the tenants were obligated to pay the monthly rent in the amount of \$3,500.00, as per the tenancy agreement.

Section 71(2)(c) of the Act enables me to make an order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

I find that the landlords sent the 10 Day Notice to the tenants by Facebook Messenger, which is not a method of service permitted under section 88 of the Act. However, I am satisfied that the tenants received the 10 Day Notice on the day the tenants replied to the landlords' message.

For this reason, and in accordance with section 71(2)(c) of the Act, I find that the tenants have been served with the 10 Day Notice on August 4, 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, August 14, 2022.

Therefore, I find that the landlords are entitled to an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act.

Are the landlords entitled to a Monetary Order for unpaid rent?

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.

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

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

Therefore, I find the landlords are entitled to a monetary award in the amount of \$3,500.00, the amount claimed by the landlords, for unpaid rent owing, pursuant to section 67 of the Act.

Are the landlords entitled to recover the filing fee for this application from the tenant?

As the landlords were partially successful in their application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application, pursuant to section 72 of the Act.

Conclusion

I grant an Order of Possession to the landlords **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.

I grant the landlords a Monetary Order in the amount of **\$3,600.00** for rent owed for 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 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 owing for September 2022, 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 7, 2022

Residential Tenancy Branch