

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
- 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 two signed Proof of Service Landlord's Notice of Direct Request Proceeding forms which declare that each tenant was served with the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) in accordance with section 89 of the Act. The applicant provided a copy of the Canada Post receipt containing the tracking numbers 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 H.M. was served on October 6, 2022, by registered mail, and is deemed to have received the Proceeding Package on October 11, 2022, the fifth day after the registered mailing.
- I find that Tenant V.M. was served on October 6, 2022, by registered mail, and is deemed to have received the Proceeding Package on October 11, 2022, the fifth day after the registered mailing.

Issue(s) to be decided

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

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 names a landlord who is not the applicant and was signed by Tenant H.M. on July 18, 2018, indicating a monthly rent of \$3,300.00, due on the first day of the month for a tenancy commencing on August 1, 2018;
- A copy of an addendum to the tenancy agreement indicating the tenancy would be extended at a monthly rental rate of \$3,382.00 effective August 1, 2019;
- A copy of a Notice of Rent Increase form showing the rent being increased from \$3,382.00 to the monthly rent amount of \$3,432.00;
- A copy of a previous decision from the Residential Tenancy Branch indicating that the applicant is the landlord of the rental property;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 6, 2022, for \$432.00 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 17, 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 8, 2022;
- A copy of a Canada Post Customer Receipt containing the tracking number to confirm the 10 Day Notice was sent to the tenants on September 8, 2022;
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy. The Direct Request Worksheet noted that \$432.00 of the \$432.00 identified as owing in the 10 Day Notice was paid on September 22, 2022.

Analysis

Is the landlord 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.

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 V.M. has not signed the tenancy agreement, which is a requirement of the Direct Request process. For this reason, I will only proceed with the portion of the landlord’s application naming Tenant H.M. as a respondent.

In accordance with sections 88 and 90 of the Act, I find that the 10 Day Notice was served on September 8, 2022 and is deemed to have been received by Tenant H.M. on September 13, 2022, five days after its registered mailing.

I accept the evidence before me that Tenant H.M. has failed to pay the rent owed in full by September 18, 2022, 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 H.M. 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 23, 2022.

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

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, pursuant to section 72 of the Act.

Conclusion

I grant an Order of Possession to the landlord **effective two (2) days after service of this Order on Tenant H.M.** Should Tenant H.M. 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 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 Tenant H.M. must be served with **this Order** as soon as possible. Should Tenant H.M. 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.

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 14, 2022

Residential Tenancy Branch