

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 (\$9,000.00)
- 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 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) by handing both sets of documents to Tenant D.A. The landlord had a witness sign the Proof of Service Landlord's Notice of Direct Request Proceeding forms to confirm this service. Based on the written submissions of the landlord:

- In accordance with section 89(1) of the Act, I find that Tenant D.A. was duly served the Proceeding Package on October 12, 2022, in person.
- In accordance with section 89(2) of the Act, I find that Tenant C.J. was duly served the Proceeding Package on October 12, 2022, the day the documents were handed to Tenant D.A.

Issue(s) 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? (\$9,000.00)

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 Tenant D.A. on April 21, 2021, indicating a monthly rent of \$1,500.00, due on the first day of the month for a tenancy commencing on April 23, 2021;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 22, 2022, for \$4,500.00 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 July 5, 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 tenants' door at 2:30 pm on June 22, 2022;
- 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?

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 C.J. 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 D.A. as a respondent.

I find that Tenant D.A. was obligated to pay the monthly rent in the amount of \$1,500.00, 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 June 22, 2022 and is deemed to have been received by Tenant D.A. on June 25, 2022, three days after its posting.

I accept the evidence before me that Tenant D.A. 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 D.A. is 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, July 5, 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 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.

I note the tenancy agreement lists the monthly rent as \$1,500.00. However, on the Direct Request Worksheet, the landlord has indicated the rent owing for the month of June 2022 is \$4,500.00.

I find I am not able to confirm the particulars of the unpaid rent. For this reason, the landlord's application for a Monetary Order for unpaid rent, 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, 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 D.A.** Should Tenant D.A. 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 D.A. must be served with **this Order** as soon as possible. Should Tenant D.A. 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 landlord's application for a Monetary Order for unpaid rent 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 29, 2022

Residential Tenancy Branch