

## **DECISION**

### **Preliminary Matter**

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I note that the tenants' rental address on the Application for Dispute Resolution submitted by the landlords is slightly different than the rental address shown on the tenancy agreement, the 10 Day Notice, and other documents submitted with the Application. Section 64(3)(c) of the *Act* allows me to amend the application to match the tenancy agreement and the 10 Day Notice, which I have done.

### **Introduction**

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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* (\$9,200.00)
- authorization to recover the filing fee for this application from the tenants pursuant to section 72 of the *Act* (\$100.00)

### **Service of Notice of Dispute Resolution Proceeding - Direct Request**

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The landlords submitted a copy of two Proof of Service Notice of Direct Request Proceeding forms which declare that on October 28, 2022, they sent each tenant the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) by registered mail to the rental unit. The landlords 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 landlords:

- I find that the landlords sent the Proceeding Packages to the tenants by registered mail on October 28, 2022, and they were deemed to have been received by the tenants on November 2, 2022, the fifth day after they were mailed.

## **Issues to be decided**

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

Are the landlords entitled to a Monetary Order for unpaid rent? (\$9,200.00)

Are the landlords entitled to recover the filing fee for this application from the tenants? (\$100.00)

## **Background and Evidence**

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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 and the tenants on September 4, 2021, indicating a monthly rent of \$2,200.00, due on the first day of the month for a tenancy commencing on September 4, 2021;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated August 29, 2022, for \$9,200.00 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 8, 2022;
- a copy of two Proof of Service Notice to End Tenancy forms which indicate that the 10 Day Notice was sent to the tenants by registered mail on August 29, 2022. The landlords provided a copy of two Canada Post Customer Receipts containing the tracking numbers to confirm this service; and;
- a copy of a Direct Request Worksheet with an attached statement of account showing the rent owing and paid during the relevant period.

## **Analysis**

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### **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 find that the tenants were obligated to pay the monthly rent in the amount of \$2,200.00, as per the tenancy agreement.

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the Act, I find that the 10 Day Notice was served on August 29, 2022 and is deemed to have been received by the tenants on September 3, 2022, five days after it was mailed.

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 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 13, 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.

Based on the evidence before me, I find that the landlords have established a claim for unpaid rent owing for November 2021 to December 2021, and January 2022 to August 2022.

Therefore, I find the landlords are entitled to a monetary award in the amount of \$9,200.00, the amount claimed by the landlords, for unpaid rent pursuant to sections 26 and 67 of the Act.

#### **Are the landlords entitled to recover the filing fee for this application from the tenants?**

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

## Conclusion

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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.

Pursuant to sections 67 and 72 of the Act, I grant the landlords a Monetary Order in the amount of **\$9,300.00** for rent owed for November 2021 to December 2021, January 2022 to 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.

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: December 6, 2022

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Residential Tenancy Branch