

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 (\$4,600.00)
- 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 a copy of a Proof of Service Notice of Direct Request Proceeding form which declares that on November 7, 2022 they sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipt containing the tracking number 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 Package to the tenant on November 7, 2022 by registered mail, and it was deemed to have been received by the tenant on November 12, 2022, the fifth day after it was mailed.

Issues 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? (\$4,600.00)

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

Background and Evidence

The landlords submitted the following evidentiary material:

- a copy of a residential tenancy agreement which was signed by the landlords on October 23, 2021 and the tenant on October 22, 2021, indicating a monthly rent of \$3,200.00, due on the first day of each month for a tenancy commencing on November 1, 2021;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated October 8, 2022, for \$4,600.00 in unpaid rent. 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 October 21, 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 5:30 pm on October 8, 2022; and;
- a copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

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 find that the tenant was obligated to pay the monthly rent in the amount of \$3,200.00, 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 October 8, 2022 and is deemed to have been received by the tenant on October 11, 2022, three days after it was posted to the door of the rental unit.

I accept the evidence before me that the tenant 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 the tenant 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, October 21, 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 August 2022 to October 2022.

Therefore, I find the landlords are entitled to a monetary award in the amount of \$4,600.00, 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 tenant?

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

I grant an Order of Possession to the landlords **effective two (2) days after service of this Order on the tenant**. Should the tenant 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 **\$4,700.00** for rent owed for August 2022 to October 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 must be served with **this Order** as soon as possible. Should the tenant 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 13, 2022

Residential Tenancy Branch