

DECISION

Preliminary Matter

I note that the tenant's 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 all 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

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* (\$35,000.00)

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 2, 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 2, 2022, by registered mail, and it was deemed to have been received by the tenant on November 7, 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? (\$35,000.00)

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 landlord A.C. and the tenant on September 30, 2016, indicating a monthly rent of \$1,250.00, due on the first day of the month for a tenancy commencing on October 1, 2016;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated October 7, 2022, for \$41,100.00 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 18, 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 2:00 pm on October 7, 2022; and;
- a copy of a Direct Request Worksheet showing the rent owing 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 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 7, 2022 and is deemed to have been received by the tenant on October 10, 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 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, October 20, 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?

I find that the landlords have not provided a monthly breakdown of rent owing on the Direct Request Worksheet. The Direct Request Worksheet must clearly show all the months for which the tenant still owes rent in order to substantiate the landlords' claim.

For this reason, the landlords' application for a Monetary Order for unpaid rent is dismissed, with leave to reapply.

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.

The landlords' Application for a Monetary Order for unpaid rent pursuant to section 67 of the Act is dismissed, 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: December 6, 2022

Residential Tenancy Branch