

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 (\$1,848.00)
- 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 K.L. the landlord had a witness and Tenant K.L. 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:

- I find that Tenant T.T. was duly served the Proceeding Package on November 10, 2022, in accordance with section 89(2) of the Act.
- I find that Tenant K.L. was duly served the Proceeding Package on November 10, 2022, in accordance with section 89(1) of the Act.

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? (\$1,848.00)

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 the tenants, indicating a monthly rent of \$1,348.00, due on the first day of the month for a tenancy commencing on October 1, 2021;
- A copy of a Notice of Rent Increase form showing the rent being increased from \$1,348.00 to the monthly rent amount of \$1,368.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 13, 2022, for \$1,848.00 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 October 22, 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 3:00 pm on October 13, 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.

I have reviewed all documentary evidence and I find that the tenants were obligated to pay the monthly rent in the amount of \$1,368.00, as per the tenancy agreement and the Notice of Rent Increase.

In accordance with sections 88 and 90 of the Act, I find that the 10 Day Notice was served on October 13, 2022 and is deemed to have been received by the tenants on October 16, 2022, three days after its posting.

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, October 26, 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.

Based on the evidence before me, I find that the landlord has established a claim for unpaid rent owing for October 2022.

I note that the only monetary award available to a landlord by way of the Direct Request process is for unpaid rent and unpaid utilities. As the landlord has also sought a monetary award for matters relating to NSF fees, parking charges, and community fees, I would not be able to consider these aspects of the landlord's claim through the Direct Request process.

Therefore, I find the landlord is entitled to a monetary award in the amount of \$1,368.00, the amount claimed by the landlord for unpaid rent, pursuant to sections 26 and 67 of the Act.

I also note that, in this type of matter, the landlord must prove they served the tenants with the Notice of Dispute Resolution Proceeding– Direct Request and all documents in support of the application in accordance with section 89 of the Act.

Section 89(1) of the Act does not allow for the Notice of Dispute Resolution Proceeding - Direct Request to be given to the tenant by leaving a copy with an adult who resides with the tenant.

Section 89(2) of the Act does allow for the Notice of Dispute Resolution Proceeding - Direct Request to be given to the tenant by leaving a copy with an adult who resides with the tenant, only when considering an Order of Possession for the landlord.

I find that the landlord has served the Proceeding Package to Tenant T.T. by leaving a copy with Tenant K.L., an adult who resides with Tenant T.T.

For this reason, I find the landlord's Monetary Order cannot be enforced against Tenant T.T. and can only be issued against Tenant K.L.

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.

Conclusion

I grant an Order of Possession to the landlord **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.

I grant the landlord a Monetary Order in the amount of **\$1,468.00** for rent owed for October 2022, and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and Tenant K.L. must be served with **this Order** as soon as possible. Should Tenant K.L. 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 portion of the landlord's application for a Monetary Order for unpaid rent owing for October 2022, naming Tenant T.T. as a respondent, without leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid NSF, parking, and community fees 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 16, 2022

Residential Tenancy Branch