

## **DECISION**

### **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 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 (\$2,102.50)
- 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**

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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) in accordance with section 89 of the Act. The landlord provided a copy of the Canada Post Customer Receipts containing the tracking numbers to confirm this service.

Based on the written submissions of the landlord and in accordance with section 90 of the Act:

- I find that Tenant P.V. was served on November 3, 2022, by registered mail, and is deemed to have received the Proceeding Package on November 8, 2022, the fifth day after the registered mailing.
- I find that Tenant B.E. was served on November 3, 2022, by registered mail, and is deemed to have received the Proceeding Package on November 8, 2022, the fifth day after the registered mailing.

### **Issue(s) to be decided**

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Is the landlord entitled to an Order of Possession based on unpaid rent?

Is the landlord entitled to a Monetary Order for unpaid rent? (\$2,102.50)

Is the landlord entitled to recover the filing fee for this application from the tenant? (\$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 landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on May 2, 2021, indicating a monthly rent of \$3,500.00, due on the first day of the month for a tenancy commencing on May 16, 2021;
- A copy of a Notice of Rent Increase form showing the rent being increased from \$3,500.00 to the monthly rent amount of \$3,552.50;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 2, 2022, for \$3,552.50 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 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 tenants' door at 3:00 pm on October 2, 2022;
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy;
- A copy of four receipts showing payments made by the tenants of \$850.00 on October 6, 2022, \$300.00 on October 7, 2022, \$300.00 on October 9, 2022, and \$3,552.00 on November 2, 2022. The receipts indicate the landlord accepted these payments for "use and occupancy only".

## **Analysis**

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### **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 \$3,552.50, 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 2, 2022 and is deemed to have been received by the tenants on October 5, 2022, three days after its posting.

I accept the evidence before me that the tenants have failed to pay the rent owed in full by October 10, 2022, 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 section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the 10 Day Notice, October 18, 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?**

The landlord submitted a copy of a receipt dated November 2, 2022, for a payment of \$3,552.00 from the tenants. However, I find the landlord has not indicated whether this full amount was applied to the rent owing for November 2022, or whether a portion was applied to the balance owing for October 2022.

I find I am not able to confirm the particulars of the landlord's monetary claim and 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

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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 **\$100.00** for the recovery of the filing fee for this application. The landlord is 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.

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: December 15, 2022

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Residential Tenancy Branch