



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

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 an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 11, 2020, the landlord sent the tenant the Notice of Direct Request Proceeding by e-mail. The landlord provided a copy of the outgoing e-mail including attachments of the supporting documents to confirm this service.

The Residential Tenancy Branch's Director's Order on e-mail service dated March 30, 2020 provides that a document required to be sent in accordance with sections 88 and 89 of the *Act* may be sent by e-mail if the sender and recipient e-mail addresses have been routinely used for tenancy matters.

The landlord submitted a copy of four e-mails exchanged between the landlord and tenant from November 15, 2019 to March 8, 2020, showing that the e-mail addresses were regularly used as a method of communication for this tenancy.

Based on the written submissions of the landlord and in accordance with the Director's Order, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on April 14, 2020, the third day after their e-mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

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 relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord on August 27, 2015 and the tenant on August 26, 2015, indicating a monthly rent of \$1,700.00, due on the first day of each month for a tenancy commencing on September 1, 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 20, 2020, for \$3,500.00 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 March 3, 2020;
- 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 4:20 pm on February 20, 2020; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on February 23, 2020, three days after its posting.

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, March 4, 2020.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of the date of this application, March 15, 2020.

I note that the amount of rent listed on the tenancy agreement (\$1,700.00) does not match the amount of the monthly rent identified on the Direct Request Worksheet (\$1,750.00).

In a Direct Request Proceeding, the landlord must provide a copy of any Notice of Rent Increase forms to demonstrate that the rent was increased in accordance with the *Act*. The landlord stated in the Application for Dispute Resolution that they did not keep a copy of the signed Notice of Rent Increase form that was given to the tenant in 2018.

I find I am not able to confirm the amount of the monthly rent and for this reason, the landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

As the landlord was partially successful in this 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 days after service of this Order** on the tenant. Should the tenant 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 section 72 of the *Act*, 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 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.

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: April 15, 2020

Residential Tenancy Branch