



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, 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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on October 2, 2020, the landlords personally served the tenant the Notice of Direct Request Proceeding. The landlords had the tenant and a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlords and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on October 2, 2020.

Issue(s) to be Decided

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

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords 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 landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenant on October 14, 2016, indicating a monthly rent of \$1,500.00,

due on the first day of each month for a tenancy commencing on October 15, 2016;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the March 10 Day Notice) dated March 8, 2020, for \$4,900.00 in unpaid rent. The March 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 17, 2020;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the March 10 Day Notice was posted to the tenant's door at 11:00 am on March 9, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Arrears 10 Day Notice) dated September 2, 2020, for \$5,100.00 in rental arrears. The Arrears 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 September 13, 2020;
- A copy of a Proof of Service Notice to End Tenancy form which was signed by the tenant and indicates that the Arrears 10 Day Notice was personally served to the tenant at 4:00 pm on September 2, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the September 10 Day Notice) dated September 2, 2020, for \$1,500.00 in unpaid rent. The September 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 September 13, 2020;
- A copy of a Proof of Service Notice to End Tenancy form which was signed by the tenant and indicates that the September 10 Day Notice was personally served to the tenant at 4:00 pm on September 2, 2020; and
- A Direct Request Worksheet and ledger showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

I have reviewed all documentary evidence and I find that the tenant was obligated to pay the monthly rent in the amount of \$1,500.00, as per the tenancy agreement.

March 10 Day Notice

In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the March 10 Day Notice on March 12, 2020, three days after its posting.

I find that since the March 10 Day Notice was issued, the tenant has made seven payments totaling \$7,300.00.

I also find that the landlords have not submitted a copy of any receipts showing the landlords accepted these payments “for use and occupancy only”.

In the absence of this indication on receipts, it is not clear whether the tenant is aware of the landlords’ intention not to reinstate the tenancy upon receiving payments from the tenant.

For this reason, I find I cannot consider the portion of landlords’ application for a Monetary Order for unpaid rent relating to the March 10 Day Notice.

Arrears 10 Day Notice

In accordance with section 88 of the *Act*, I find that the tenant was duly served with the Arrears 10 Day Notice on September 2, 2020.

Policy Guideline #52 provides the following information pertaining to the *COVID-19 Related Measures Act (the C-19 Act)*:

“Affected rent means rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the “specified period” between March 18, 2020 and August 17, 2020”

The guideline goes on to state:

“A landlord cannot pursue an eviction for unpaid affected rent unless they have already given a valid repayment plan or there is a valid prior agreement still in effect.”

I find that the rent listed on the Arrears 10 Day Notice includes amounts from April 2020 to August 2020 and is considered affected rent. I also find that the landlords have not submitted a copy of a repayment plan or a valid prior agreement to demonstrate that they have the authority to issue the Arrears 10 Day Notice for the affected rent.

As the landlords have not complied with the provisions of Policy Guideline #52 and the *C19 Act* regarding the Arrears 10 Day Notice issued to the tenant, I find I cannot consider the portion of the landlords’ application for a Monetary Order for unpaid rent relating to the Arrears 10 Day Notice.

September 10 Day Notice

In accordance with section 88 of the *Act*, I find that the tenant was duly served with the September 10 Day Notice on September 2, 2020.

I accept the evidence before me that the tenant has failed to pay the September 2020 rent owed in full within the five days granted under section 46(4) of the *Act* and did not dispute the September 10 Day Notice within that five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under sections 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the September 10 Day Notice, September 13, 2020.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary award in the amount of \$1,500.00, the amount claimed by the landlords for unpaid rent owing for September 2020, as of the date of this application, September 30, 2020.

As the landlords were partially successful in this 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 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 sections 67 and 72 of the *Act*, I grant the landlords a Monetary Order in the amount of \$1,600.00 for rent owed for September 2020 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.

I dismiss the balance of the landlords' 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: October 22, 2020

Residential Tenancy Branch