



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DIRECT REQUEST 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*”). The Application dealt with the Landlords’ request for an order of possession, a monetary order, and recovery of the filing fee.

The Landlords submitted a signed Proof of Service - Notice of Direct Request Proceeding which declares that on November 22, 2020, the Landlords served the Tenant with the Notice of Direct Request Proceeding and supporting documents by attaching a copy to the door of the Tenant’s rental unit. Service in this manner was witnessed by D.O. Based on the written submissions of the Landlords and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with these documents on November 25, 2020, the third day after they were attached to the door of the Tenant’s rental unit.

Issues to be Decided

1. Are the Landlords entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. Are the Landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?
3. Are the Landlords entitled to recover the filing fee 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 signed by A.O. and the Tenant on March 30, 2019, indicating a monthly rent of \$1,350.00, due on or before the first day of each month, for a tenancy commencing on April 1, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 14, 2020 (the “10 Day Notice”), for \$6,597.21 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 27, 2020;
- A copy of a witnessed Proof of Service form which indicates that the Landlords attempted to serve the 10 Day Notice on the Tenant in person on October 14, 2020 but that the Tenant refused to accept service and instructed the Landlords to put the 10 Day Notice in the Tenant’s mailbox; and
- A Direct Request Worksheet and attached breakdown showing the rent owing and paid for the period from May 1 to November 30, 2020.

Analysis

I have reviewed all documentary evidence and I find that the Tenant was obligated to pay the monthly rent in the amount of \$1,350.00, as per the tenancy agreement.

With respect to the Landlords’ request for an order of possession, and in accordance with sections 88 and 90 of the *Act*, I find that the Tenant was personally served with the 10 Day Notice on October 14, 2020.

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 October 24, 2020, the corrected effective date of the 10 Day Notice.

Therefore, I find that the Landlords are entitled to an order of possession which will be effective two days after service upon the Tenant.

With respect to the Landlords' request for a monetary order for unpaid rent, the Landlords must prove they served the Tenant with the Notice of Direct Request Proceeding with all the required inclusions as indicated on the document as per section 89 of the *Act*.

Section 89(1) of the *Act* does not allow for service of the Notice of Direct Request Proceeding to be given to a tenant by attaching a copy to a door at the address at which the tenant resides. Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be given to a tenant by attaching a copy to a door at the address at which the tenant resides, only when considering an order of possession for the landlord. I also note the Proof of Service document submitted by the Landlords states, in bold lettering: "Do not use this method of service if requesting a Monetary Order."

I find that the Landlords served the Notice of Direct Request Proceeding and supporting documents on the Tenant by attaching a copy to the door of the Tenant's rental unit. For this reason, the monetary portion of the Landlords' Application for unpaid rent is dismissed with leave to reapply.

For the same reason, the Landlords' request to recover the filing fee paid for this Application is dismissed, without leave to reapply.

Conclusion

The Landlords are granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

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 18, 2020

Residential Tenancy Branch