



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 filed by the Landlord for an order of possession and a monetary order based on unpaid rent, and an order granting recovery of the filing fee.

The Landlord submitted a signed Proof of Service - Notice of Direct Request Proceeding document which declares that the Landlord served the Tenant with the Notice of Direct Request Proceeding and supporting documents in person on February 19, 2021, which service was witnessed by G.C. Receipt of these documents was confirmed by the Tenant’s signature. I find the Tenant was served with and received these documents on February 19, 2021.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. Is the Landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?
3. 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 and the Tenant on August 28, 2018, indicating a monthly rent in the amount of \$1,850.00 due on the first day of each month, for a tenancy commencing on September 8, 2018;
- A copy of a Notice of Rent Increase dated June 30, 2019 and effective October 1, 2019 purporting to increase rent from \$1,850.00 per month to \$1,900.00 per month;
- A copy to a letter from the Landlord to the Tenant dated June 30, 2019 concerning the Notice of Rent Increase;
- Copies of letters from the Strata to the Landlord dated February 26, 2019 concerning contravention of Strata Bylaws/Rules;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 27, 2021 for \$7,950.00 in unpaid rent (the "10 Day Notice"). 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 date of February 9, 2021;
- A copy of a letter from the Landlord to the Tenant dated January 29, 2021 concerning service of the 10 Day Notice;
- A copy of a signed Proof of Service - Notice to End Tenancy form which indicates that the 10 Day Notice was served on the Tenant by attaching a copy to the Tenant's door on January 29, 2021, which service was witnessed by G.C.; and
- A copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

Analysis

In accordance with sections 88 and 90 of the *Act*, I find that the Tenant is deemed to have received the 10 Day Notice on February 1, 2021, three days after it was attached to the Tenant's door.

I accept the evidence before me that the Tenant failed to pay the rent owed in full within the five days after receipt of the 10 Day Notice 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 February 11, 2021, the corrected effective date of the 10 Day Notice.

Therefore, I find the Landlord is entitled to an order of possession which will be effective two days after it is served on the Tenant.

With respect to the Landlord's claim for unpaid rent, the onus is on the Landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the Landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

In this case, I have examined the documents submitted and find that there are issues that cannot be resolved in a Direct Request Proceeding. First, the Notice of Rent Increase appears to be for an amount over the maximum allowable rent increase permitted in 2019 (2.5%).

Second, the Direct Request Worksheet includes fees for NSF cheques and late payments. The addendum to the tenancy agreement includes the following provision:

7. The landlord will charge a fee of \$50 for any future NSF cheque issued by the tenant. Late payment of rent is subject to a fine of \$25 unless the rent is paid in full within 5 days.

This provision partially conflicts with section 7 of the Residential Tenancy Regulation which provides for "an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent".

I find that the above issues give rise to concerns about the amount of rent due and that the precise amount of rent due has not been substantiated. As a result, I am not able to determine the precise amount of rent owing. For this reason, the Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply.

As the Landlord is partially successful, I find they are entitled to a monetary award in the amount of \$100.00 in recovery of the filing fee paid to make the application.

Conclusion

The Landlord is 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.

The Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply.

The Landlord is granted a monetary order in the amount of \$100.00 in recovery of the filing fee for this application. The monetary order must be served on the Tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: March 5, 2021

Residential Tenancy Branch