



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-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 to obtain an Order of Possession based on unpaid rent and to recover the filing fee paid for the application.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the landlord on February 10, 2022.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on February 16, 2022, the landlord sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request by e-mail. The landlord provided a copy of the outgoing e-mail containing the Direct Request documents as attachments to confirm this service. The landlord also submitted a copy of an Address for Service form which was signed by the landlord and the tenant on September 13, 2021, indicating the tenant agreed to receive documents by e-mail.

Based on the written submissions of the landlord and in accordance with sections 43(2) and 44 of the *Residential Tenancy Regulation*, I find that the Direct Request Proceeding documents were served on February 16, 2022 and are deemed to have been received by the tenant on February 19, 2022, 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 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 January 1, 2021, indicating a monthly rent of \$1,039.00, due on the first day of each month for a tenancy commencing on January 1, 2021
- A copy of a Notice of Rent Increase form showing the rent being increased from \$1,039.00 to the monthly rent amount of \$1,054.00
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 2, 2022, for \$1,054.00 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 January 12, 2022
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenant by e-mail at 5:50 pm on January 2, 2022
- A copy of the outgoing e-mail containing the 10 Day Notice as an attachment to confirm the 10 Day Notice was sent to the tenant on January 2, 2022
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy. The Direct Request Worksheet noted that \$1,050.00 of the \$1,054.00 identified as owing in the 10 Day Notice was paid on January 16, 2022

Analysis

I have reviewed all documentary evidence and I find that the tenant was obligated to pay the monthly rent in the amount of \$1,054.00, as per the tenancy agreement and the Notice of Rent Increase.

In accordance with sections 43(1) and 44 of the *Regulation*, I find that the 10 Day Notice was served on January 2, 2022 and is deemed to have been received by the tenant on January 5, 2022, three days after its e-mailing.

I accept the evidence before me that the tenant has failed to pay the rent owed in full by January 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 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, January 15, 2022.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent.

As the landlord was 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.

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 10, 2022

Residential Tenancy Branch