



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-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 utilities, to obtain monetary compensation for unpaid rent and utilities, 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 March 4, 2022.

The landlord submitted a copy of two Proof of Service Notice of Direct Request Proceeding forms signed by tenant Sa.G. which declare that on March 17, 2022, the landlord served each tenant the Notice of Dispute Resolution Proceeding - Direct Request by handing them to tenant Sa.G.

Based on the written submissions and evidence of the landlord and in accordance with section 89(1) of the *Act*, I find that the Direct Request Proceeding documents were served to the tenants on March 17, 2022.

Issues to be Decided

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

Is the landlord entitled to monetary compensation for unpaid rent and utilities 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 and tenant So.R. on July 8, 2021, indicating a monthly rent of \$2,400.00, due on the first day of each month for a tenancy commencing on August 1, 2021;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated February 25, 2022, for \$3,257.76 in unpaid rent and \$295.45 in unpaid utilities. The 10 Day Notice provides that the tenants 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 7, 2022;
- a copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to tenant Sa.G. at 7:45pm on February 25, 2022; and;
- a copy of a Direct Request Worksheet showing the rent and utilities owing and paid during the relevant period.

Analysis

Paragraph 12 (1) (b) of the Residential Tenancy Regulation establishes that a tenancy agreement is required to be “signed and dated by both the landlord and the tenant.”

I find that tenant Sa.G. has not signed the tenancy agreement, which is a requirement of the direct request process. For this reason, the portion of the landlord’s application against tenant Sa.G. is dismissed without leave to reapply.

I have reviewed all documentary evidence and I find that tenant So.G. has signed the tenancy agreement and was obligated to pay the monthly rent in the amount of \$2,400.00, as per the tenancy agreement.

In accordance with section 88 of the *Act*, I find that the 10 Day Notice was served to tenant So.G. on February 25, 2022.

I accept the evidence before me that tenant So.G. 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 tenant So.G. is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, March 7, 2022.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award against tenant So.G. in the amount of \$2,400.00, the amount claimed by the landlord for unpaid rent owing for February 2022.

Section 46(6) of the *Act* allows a landlord to treat unpaid utilities as unpaid rent if

- (a) a tenancy agreement requires the tenant to pay utility charges **to the landlord**, and
- (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

I find that the tenancy agreement does not state that the utilities are the tenant's responsibility and does not specify that the tenant is to pay the utilities to the landlord. For this reason, the monetary portion of the landlord's application concerning unpaid utilities 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 tenant So.G. Should tenant So.G. and **any other occupant** 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 landlord a Monetary Order in the amount of \$2,500.00 for rent owed for February 2022 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and tenant So.G. must be served with **this Order** as soon as possible. Should tenant So.G.

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 portion of the landlord's application for a Monetary Order naming tenant Sa.G. as a respondent without leave to reapply.

The landlord's application for a Monetary Order for unpaid utilities is dismissed 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 07, 2022

Residential Tenancy Branch