



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Diverse Property Mgmt. LTD
and [tenant name suppressed to protect privacy]

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, to obtain monetary compensation for 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 May 30, 2022.

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 monetary compensation for unpaid rent 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*?

Notice of Dispute Resolution Proceeding – Direct Request

In this type of matter, the landlord must prove they served the tenant with the Notice of Dispute Resolution Proceeding – Direct Request and all documents in support of the application in accordance with section 89 of the *Act*.

Policy Guideline #39 provides that service by e-mail may be proven by providing:

- A copy of the outgoing email showing the email address used, the date the email was sent, and any attachments included in the email and
- The RTB-51 - Address for Service or other document that sets out the party's email address for service

The landlord has indicated that they sent the Notice of Dispute Resolution Proceeding - Direct Request to the tenant by e-mail. However, I find the landlord has not submitted a copy of the outgoing e-mail containing the Direct Request documents as attachments to confirm this service.

I also find there is no evidence to demonstrate that the tenant indicated documents could be served by e-mail. I find the landlord has not demonstrated that the tenant's e-mail address was provided for service of documents, as required by section 43(2) of the *Residential Tenancy Regulation*.

For these reasons, I find I am not able to consider service of the Notice of Dispute Resolution Proceeding - Direct Request by e-mail.

Section 89(1) of the *Act* does not allow for the Notice of Dispute Resolution Proceeding - Direct Request to be given to the 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 Dispute Resolution Proceeding - Direct Request to be given to the 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.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on June 10, 2022, the landlord posted the Notice of Dispute Resolution Proceeding - Direct Request to the door of the rental unit. The landlord had a witness sign the Proof of Service Notice of Direct Request Proceeding form to confirm this service.

Based on the written submissions of the landlord and in accordance with sections 89(2) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on June 10, 2022 and are deemed to have been received by the tenant on June 13, 2022, the third day after their posting.

I find that the landlord has served the Notice of Dispute Resolution Proceeding - Direct Request to the door of the rental unit at which the tenant resides, and for this reason, the monetary portion of the landlord's application for unpaid rent is dismissed, with leave to reapply.

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 May 15, 2018, indicating a monthly rent of \$1,150.00, due on the first day of each month for a tenancy commencing on May 15, 2018
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 5, 2022, for \$1,221.00 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 May 18, 2022
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 11:00 am on May 5, 2022
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on May 5, 2022 and is deemed to have been received by the tenant on May 8, 2022, three days after its posting.

I note that the address indicated on the 10 Day Notice from which the tenant must move is slightly different than the tenant address on the 10 Day Notice where documents are served, the tenancy agreement, the Application for Dispute Resolution and all other documents submitted with the landlord's application. I have amended this address to match all other information provided for the address as per section 68(1) of the *Act* as it is reasonable to do so under the circumstances.

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 section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, May 18, 2022.

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

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 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.

I dismiss the landlord's 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: July 05, 2022

Residential Tenancy Branch