

## **DECISION**

### **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 the landlord's Application for Dispute Resolution (Application) for:

- an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act
- a Monetary Order for unpaid rent pursuant to section 67 of the Act (\$1,725.70)
- authorization to recover the filing fee for this application from the tenants pursuant to section 72 of the Act (\$100.00)

### **Service of Notice of Dispute Resolution Proceeding - Direct Request**

---

The landlord submitted a copy of two Proof of Service Notice of Direct Request Proceeding forms which declare that on October 7, 2022 they sent each tenant the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) by registered mail to the rental unit. The landlord provided a copy of two Canada Post Customer Receipts containing the tracking numbers to confirm this service. In accordance with sections 89(1) and 90 of the Act and based on the written submissions and evidence of the landlord:

- I find that the landlord sent the tenants the Proceeding Packages on October 7, 2022 by registered mail and they are deemed to have been received by the tenants on October 12, 2022, the fifth day after they were mailed.

### **Issues to be decided**

---

Is the landlord entitled to an Order of Possession based on unpaid rent?

Is the landlord entitled to a Monetary Order for unpaid rent? (\$1,725.70)

Is the landlord entitled to recover the filing fee for this application from the tenants? (\$100.00)

## 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 evidentiary material:

- a copy of a residential tenancy agreement which names a landlord who is not the applicant and signed by tenants on March 14, 2014, indicating a monthly rent of \$1,359.00, due on the first day of the month for a tenancy commencing on April 1, 2014;
- a copy of one Notice of Rent Increase form showing the rent being increased from \$1,581.00 to the monthly rent amount of \$1,604.70;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated September 16, 2008, for \$1,725.70 in unpaid rent. 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 September 27, 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 I.J. at 10:30 am on September 16, 2022;
- a copy of a letter dated September 19, 2022 showing that the applicant is the owner of the property; and;
- a copy of a Direct Request Worksheet showing the rent owing during the relevant period.

## Analysis

---

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the 10 Day Notice was served to the tenants on September 16, 2022.

I accept the evidence before me that the tenants have 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 tenants are 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, September 27, 2022.

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

I note that the amount of rent on the tenancy agreement does not match the amount of rent being claimed on the 10 Day Notice. I note that the landlord submitted a copy of one Notice of Rent Increase form, however, I find that they did not submit copies of all of the Notice of Rent Increase forms issued. Copies of all Notice of Rent Increase forms

must be submitted with the Application for Dispute Resolution to substantiate the claim for the increased rent.

I find I am not able to determine the precise amount of rent owing and for this reason the landlord's application for a Monetary Order for unpaid rent 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 the tenant(s). Should the tenant(s) 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(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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.

The landlord's application for a Monetary Order for unpaid rent 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: November 10, 2022

---

Residential Tenancy Branch