

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 for unpaid rent and/or utilities pursuant to sections 46 and 55 of the Act
- a Monetary Order for unpaid rent and/or utilities pursuant to section 67 of the Act (\$1,095.69)
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act (\$100.00)

Service of Notice of Dispute Resolution Proceeding - Direct Request

The landlord submitted a signed Proof of Service Landlord's Notice of Direct Request Proceeding which declares that the tenant was served with the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) in accordance with section 43 of the *Residential Tenancy Regulation* (the Regulation).

The landlord submitted 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 January 30, 2022, indicating the tenant agreed to receive documents by e-mail.

Based on the written submissions of the landlord, and in accordance with section 44 of the Regulation, I find that Tenant C.K. was served on September 29, 2022, by pre-agreed e-mail and is deemed to have received the Proceeding Package on October 2, 2022, the third day after it was e-mailed.

Issue(s) to be decided

Is the landlord entitled to an Order of Possession based on unpaid rent and/or utilities?

Is the landlord entitled to a Monetary Order for unpaid rent and/or utilities? (\$1,095.69)

Is the landlord entitled to recover the filing fee for this application from the tenant? (\$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 was signed by the landlord on January 30, 2022, and the tenant on January 29, 2022, indicating a monthly rent of \$2,000.00, due on the first day of the month for a tenancy commencing on February 1, 2022;
- A copy of a utility bill from Fortis for the rental unit dated August 9, 2022, for \$216.75
- A copy of a consumption data report from BC Hydro showing a projected total of \$467.00 for usage until August 26, 2022
- A copy of an e-mail demand letter from the landlord to the tenant, dated August 18, 2022, requesting payment of utilities in the amount of \$95.69
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 2, 2022, for \$1,000.00 in unpaid rent and \$95.69 in unpaid utilities. 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 September 15, 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 10:19 am on September 2, 2022;
- A copy of an e-mail sent to the tenant on September 2, 2022, containing the 10 Day Notice as an attachment
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

Is the landlord entitled to an Order of Possession based on unpaid rent and/or utilities?

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy pursuant to section 46(5) of the Act.

I have reviewed all documentary evidence and I find that the tenant was obligated to pay the monthly rent in the amount of \$2,000.00, and 30% of the utilities as per the tenancy agreement.

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

I accept the evidence before me that the tenant has failed to pay the unpaid 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, September 15, 2022.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the Act.

Is the landlord entitled to a Monetary Order for unpaid rent and/or utilities?

Section 26 of the Act requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Based on the evidence before me, I find that the landlord has established a claim for unpaid rent owing for September 2022.

Therefore, I find the landlord is entitled to a monetary award in the amount of \$1,000.00, the amount claimed by the landlord, for unpaid rent owing.

Section 46(6) of the Act provides that if utility charges are unpaid more than 30 days after a written demand for payment, a landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I find that the date of the 10 Day Notice (September 2, 2022) is less than thirty days after the date of the e-mail demand letter (August 18, 2022). I find that not enough time has passed to allow the landlord to include the unpaid utilities on the 10 Day Notice.

For this reason, the monetary portion of the landlord's application concerning unpaid utilities is dismissed, with leave to reapply.

Is the landlord entitled to recover the filing fee for this application from the tenant?

As the landlord was partially successful in their 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 (2) days after service of this Order on the tenant(s)**. Should the tenant(s) or anyone on the premises 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 **\$1,100.00** for rent owed for September 2022 and 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.

I dismiss the landlord's application for a Monetary Order for unpaid utilities 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 2, 2022

Residential Tenancy Branch