

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 landlords' 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 (\$7,950.00)
- 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 landlords submitted two signed Proof of Service Landlord's Notice of Direct Request Proceeding forms which declare that each tenant was served with the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) by attaching the documents to the door of the rental unit. The landlords had a witness sign the Proof of Service Landlord's Notice of Direct Request Proceeding forms to confirm this service.

Based on the written submissions of the landlords and in accordance with sections 89(2) and 90 of the Act:

- I find that Tenant J.T.A.M.J. was served on November 1, 2022 and is deemed to have received the Proceeding Package on November 4, 2022, the third day after it was posted to the door of the rental unit.
- I find that Tenant K.T.H. was served on November 1, 2022 and is deemed to have received the Proceeding Package on November 4, 2022, the third day after it was posted to the door of the rental unit.

Issue(s) to be decided

Are the landlords entitled to an Order of Possession based on unpaid rent?

Are the landlords entitled to a Monetary Order for unpaid rent? (\$7,950.00)

Are the landlords 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 landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords on November 5, 2021, and the tenants on November 20, 2021, indicating a monthly rent of \$2,650.00, due on the first day of the month for a tenancy commencing on December 1, 2021;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 21, 2022, for \$2,650.00 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 1, 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 tenants' door at 5:15 pm on August 22, 2022;
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

Are the landlords entitled to an Order of Possession based on unpaid rent?

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 tenants were obligated to pay the monthly rent in the amount of \$2,650.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the Act, I find that the 10 Day Notice was served on August 22, 2022 and is deemed to have been received by the tenants on August 25, 2022, three days after its posting.

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 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, September 4, 2022.

Therefore, I find that the landlords are entitled to an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act.

Are the landlords entitled to a Monetary Order for unpaid rent?

In this type of matter, the landlords must prove they served the tenants 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.

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.

I find that the landlords have served the Notices of Dispute Resolution Proceeding - Direct Request to the door of the rental unit at which the tenants reside.

For this reason, the monetary portion of the landlords' application for unpaid rent, pursuant to section 67 of the Act, is dismissed, with leave to reapply.

Are the landlords entitled to recover the filing fee for this application from the tenant?

As the landlords were partially successful in their application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application, pursuant to section 72 of the Act.

Conclusion

I grant an Order of Possession to the landlords **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.

I grant the landlords a Monetary Order in the amount of **\$100.00** for the recovery of the filing fee for this application. The landlords are 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 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: December 6, 2022

Residential Tenancy Branch