



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1343 in order to enable the tenant to connect with this teleconference hearing scheduled for 1330. The landlord and his agent attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord elected to have his agent and property manager provide testimony in this application.

The landlord's agent delivered the dispute resolution package to the tenant on 20 October 2014. The dispute resolution package was delivered by registered mail. The landlord's agent provided me with the Canada Post tracking number to confirm this mailing. I find that the tenant was deemed served with the dispute resolution package on 25 October 2014, the fifth day after its mailing. I find that the tenant was properly served with the dispute resolution package in accordance with sections 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the landlord's agent, not all details of the respective submissions and / or arguments are

reproduced here. The principal aspects of the both the landlord's claim and my findings around each are set out below.

The landlord's agent provided sworn and uncontested testimony.

The landlord's agent, RK, testified that there is no written tenancy agreement for this tenancy. RK testified that, for the entirety of the tenancy, monthly rent of \$800.00 was payable on the first of the month. RK testified that the landlord did not collect any security deposit.

RK testified that he served the tenant personally with the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on 6 October 2014. The 10 Day Notice set out unpaid rent of \$2,800.00 and an effective date of 17 October 2014. The service was witnessed. I was provided with the 10 Day Notice and a witness statement that confirm this service. I have reviewed all documentary evidence and accept the tenant has been deemed served with 10 Day Notice as declared by the landlord.

RK testified that another occupant moved into the rental unit approximately five or six months ago. RK testified that this occupant would provide money for the occupant's use of the property directly to the landlord. RK testified that the occupant and the landlord did not have any tenancy agreement.

RK testified that the landlord is elderly. RK testified that the tenant frequently asks the landlord for money and that the landlord gives the tenant money because the landlord is intimidated by the tenant. RK asked if it was possible to seek an early end to the tenancy on this basis. I informed RK that he had not requested the early end to tenancy in his application so it was not properly before me.

RK asked to amend the application to include November's rent less \$400.00 the landlord received from the occupant. I allowed the amendment on the basis that the tenant ought to have known of and met his November rent obligation.

RK testified as to rent owed and collected since June 2014 in relation to this tenancy:

Item	Amount
June 2014 rent	\$800.00
June 2014 money received from occupant	-600.00
July 2014 rent	800.00
August 2014 rent	800.00
September 2014 rent	800.00
September 2014 money received from occupant	-600.00
October 2014 rent	800.00
November 2014 rent	800.00
November 2014 money received from occupant	-400.00

Total Outstanding Rent	\$3,200.00
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The landlord has not received any rent from the tenant since June 2014. The landlord has received money from the occupant for the occupant's use of the premises.

Analysis

I accept the evidence before me that there has been a failure to pay the rent owed for this tenancy in full within the five days granted under subsection 46(4) of the Act. I find that the \$400.00 received by the landlord from the occupant in November 2014 does not constitute a reinstatement of the tenancy.

I find that the tenant owes the landlord \$3,200.00 in outstanding rent.

Based on the foregoing, I find that the tenant is conclusively presumed under subsection 46(5) of the Act to have accepted that the tenancy ended on the effective date of the 10 Day Notice, 17 October 2014.

As the landlord has been successful in his application, he is entitled to recover his \$50.00 filing fee from the tenant.

Therefore, I find that the landlord is entitled to an order of possession and a monetary order of \$3,250.00 for unpaid rent owing from June to November 2014 and his filing fee.

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 67 of the Act, I find that the landlord is entitled to a monetary order in the amount of \$3,250.00. 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: November 10, 2014

