



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 landlords' 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 their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1130 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. Landlord JKU attended the hearing with her agent and both were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord's agent provided both her own testimony and translations of the landlord's testimony. In this decision a reference to the landlord's testimony refers to testimony from the landlord's agent or testimony from the landlord translated by the landlord's agent.

The landlord provided sworn testimony that on 3 October 2014 she personally served the tenant with the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the 10 Day Notice) on 3 October 2014. The landlord provided me with the name of a person who witnessed this service. On the basis of this evidence, I accept that the tenant was served with the 10 Day Notice in accordance with section 88 of the Act.

The landlord provided sworn testimony that she served the tenant with the dispute resolution package, including the documentary evidence before me, by registered mail on 9 October 2014. The landlord testified that the registered mailing was not picked up by the tenant and returned back to the landlord. I was provided with a Canada Post tracking number that confirmed the same. I accept that the tenant was deemed served with the dispute resolution package on 14 October 2014, the fifth day after its mailing, in accordance with sections 89 and 90 of the Act.

At the hearing the landlord asked to amend her application to include rent for November. I allowed the landlord to amend her application as the tenant ought to have known she would have liability for November's rent if she continued to occupy and use the rental unit.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords 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, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around each are set out below.

The landlord provided sworn, undisputed testimony.

The landlord and tenant did not sign a written tenancy agreement. The landlord testified that the tenancy began 1 February 2013. Rent of \$1,150.00 and utilities of \$250 were payable monthly. The landlord did not collect a security deposit.

The landlord testified that she served the 10 Day Notice personally to the tenant on 3 August 2014. The landlord testified that the tenant has not paid rent or utilities for March, April, May, June, July, August, September, October or November. The landlord testified that the tenant is still occupying the rental unit.

Analysis

The tenant has not filed an application disputing the 10 Day Notice. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the five days granted under subsection 46(4) of the Act. 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, 9 October 2014.

Subsection 46(1) of the Act establishes how a landlord may end a tenancy for unpaid rent "by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice." The tenant was personally served

with the 10 Day Notice on 3 October 2014. The earliest effective date for this notice was 13 October 2014. Pursuant to section 53 of the Act, I correct the effective date from 9 October 2014 to 13 October 2014. I grant the landlord an order of possession

The landlord provided sworn and undisputed testimony that the tenant has not paid rent or utilities for March 2014 to November 2014. I accept that the landlord is entitled to \$12,600.00 in rent and utilities.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$12,700.00 under the following terms:

Item	Amount
Unpaid March Rent	\$1,150.00
Unpaid March Utilities	250.00
Unpaid April Rent	1,150.00
Unpaid April Utilities	250.00
Unpaid May Rent	1,150.00
Unpaid May Utilities	250.00
Unpaid June Rent	1,150.00
Unpaid June Utilities	250.00
Unpaid July Rent	1,150.00
Unpaid July Utilities	250.00
Unpaid August Rent	1,150.00
Unpaid August Utilities	250.00
Unpaid September Rent	1,150.00
Unpaid September Utilities	250.00
Unpaid October Rent	1,150.00
Unpaid October Utilities	250.00
Unpaid November Rent	1,150.00
Unpaid November Utilities	250.00
Filing Fee	100.00
Total Monetary Order	\$12,700.00

The landlord is provided with these orders in the above terms and the tenant must be served with this order as soon as possible. Should the tenant fail to comply with these

orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

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.

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 21, 2014

Residential Tenancy Branch

