



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

The tenant did not attend. The landlord was given full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent was served to the tenant on April 3, 2015 by posting the notice on the door. Pursuant to section 88 and 90 of the Act, I find that the tenant was deemed served with the 10 Day Notice on April 6, 2015 (3 days after posting).

The landlord gave sworn testimony that he served the tenant with the Application for Dispute Resolution hearing package on April 15, 2015 by registered mail. He provided the Canada Post receipt and tracking number for this mailing. He provided tracking information that advised him the package was unclaimed. Under the provisions of the Act, and Residential Tenancy Policy Guideline No. 12, service by registered mail is considered satisfied and the recipient deemed served 5 days after the registered mailing is sent. The Guideline states, "Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing." This deemed service is prefaced on the requirement that the sender has satisfied the Arbitrator that the address for the recipient is valid. This service is effective regardless of whether the recipient chooses to Pursuant to section 89 and 90 of the Act, I find the tenant deemed served with the Application for Dispute Resolution hearing package on April 20, 2015, 5 days after its registered mailing.

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

This month to month tenancy began on June 15, 2012 with a rental amount of \$1150.00 payable on the first of each month. The landlord confirmed in his testimony that he continues to hold the \$575.00 security deposit and the \$575.00 pet damage deposit both paid on June 15, 2012 by the tenant. The landlord provided sworn, undisputed testimony that the tenant is still residing in the residence. The landlord testified that his partner sees the tenant's car on the property.

The landlord has applied for an Order of Possession for unpaid rent for the month of April 2015. The landlord testified that the tenant did not pay rent of \$1150.00 due on April 1, 2015. The landlord provided sworn undisputed testimony that the tenant has not paid rent regularly for the last several months. He testified that the tenant currently owes \$6500.00 in rental arrears calculated as follows;

Item	Amount
Unpaid Rent – October 2014	\$550.00
Unpaid Rent – November 2014	1150.00
Unpaid Rent – December 2014	150.00
Unpaid Rent – January 2014	50.00
Unpaid Rent – February 2014	1150.00
Unpaid Rent – March 2014	1150.00
Unpaid Rent – April 2014	1150.00
Unpaid Rent – May 2014 (amended at hearing to add unpaid rent for May)	1150.00
Total Rental Arrears	\$6500.00

After the tenant failed to pay rent on April 1, 2015, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not pay the April 2015 rent after receiving the 10 Day Notice on April 6, 2015. The landlord testified that the tenant approached his business partner after receiving the 10 Day Notice to say that he had sold his truck and that, as soon as he received the \$8000.00 for his truck, he would pay all rental arrears. The landlord testified that neither himself nor his partner have had contact with the tenant since that date. The landlord testified that the tenant's phone is disconnected. The landlord applied for an Order of Possession.

The landlord is also seeking a monetary award of \$6500.00 for the outstanding rental amounts from October 2014 through April 2015. The landlord originally sought \$5350.00 plus the recovery of his \$100.00 filing fee. However, he testified that the tenant remains in the unit and has failed to pay May 2015 rent. Therefore, the landlord sought to amend his application to include May 2015 making a total in rental arrears of \$6500.00. I granted the landlord's

application to amend the amount sought based on the sworn undisputed testimony of the landlord that the tenant continues to reside in the rental unit and that the tenant would not be prejudiced by this amendment. The tenant would only be prejudiced by an amendment that he could not have reasonably anticipated. The landlord's request for May 2015 rent when the tenant has failed to pay rent for a further month and he continues to occupy the rental unit is a request the tenant could reasonably anticipate.

Analysis

The tenant failed to pay the April 2015 rent or any of his rental arrears within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by April 16, 2015. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

I find that the landlord is entitled to receive an order for unpaid rent in \$6500.00. I accept the landlord's undisputed sworn testimony that the tenant has failed to pay rental amounts from October 2014 to the date of this hearing for a total rental arrears of \$6500.00. The landlord provided a detailed report calculating the amounts outstanding and indicated that he has kept records of the tenant's rental payments. I am issuing the attached monetary order that includes the landlord's application for \$6500.00 in unpaid rent during the last several months of this tenancy.

The landlord testified that he continues to hold a security deposit of \$575.00 and a pet damage deposit of \$575.00 plus any interest from June 15, 2012 to the date of this decision for this tenancy. There is no interest payable for this period. Pursuant to section 72(2) of the *Act* that allows a payment from a tenant to landlord to be satisfied by a deduction from any security or pet damage deposit due to the tenant, I will allow the landlord to retain the security and pet damage deposits in partial satisfaction of the monetary award.

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 grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlord as follows:

Item	Amount
Unpaid Rent – October 2014	\$550.00
Unpaid Rent – November 2014	1150.00
Unpaid Rent – December 2014	150.00
Unpaid Rent – January 2014	50.00
Unpaid Rent – February 2014	1150.00
Unpaid Rent – March 2014	1150.00
Unpaid Rent – April 2014	1150.00
Unpaid Rent – May 2014	1150.00
Deduct Security Deposit	-575.00
Deduct Pet Damage Deposit	-575.00
<i>Filing Fee</i>	100.00
Total Rental Arrears	\$5450.00

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: May 29, 2015

Residential Tenancy Branch

