



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for 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 this hearing, although I waited until 1:48 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord's representative attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The landlord testified that the tenant was served with the Application for Dispute Resolution by registered mail to his rental unit on March 18, 2015. Receipts were not provided however the landlord's representative provided sworn testimony that Canada Post tracking information indicated that the package was returned "unclaimed". She also testified that the tenants continued to reside in the rental unit at the time of this delivery.

Residential Tenancy Policy Guideline No. 12 provides the explanation of *deemed service*.

Deemed service means that the document is presumed to have been served unless there is clear evidence to the contrary. Evidence contrary to these provisions could prove that the documents were received earlier. .

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.

Given the clear and consistent testimony of the landlord, I find that she has sufficiently proved that the tenant was deemed served with the Application for Dispute Resolution and any supporting documents on March 23, 2015, 5 days after its registered mailing.

Issue(s) to be Decided

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

Based on the testimony provided by the landlord's representative and the evidentiary materials submitted for this hearing, this tenancy began on September 1, 2013 as a one year fixed term tenancy. The tenancy continued on a month to month basis at the end of that fixed term. The rental amount was \$5200.00 payable on the first of each month. A copy of the residential tenancy agreement was submitted by the landlord. The written agreement indicated that a security deposit of \$2600.00 and a pet damage deposit of \$1000.00 were paid by the tenant on July 18, 2013. The landlord's representative testified that the landlord continues to hold the security and pet damage deposits.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on March 12, 2013. A copy of that notice was submitted by the landlords as evidence in this hearing. The landlord testified that the tenant did not pay the outstanding rent after receiving the 10 Day Notice on March 12, 2013. The landlord made an application for a monetary order including two months of unpaid rent totalling \$10, 400.00.

The landlord testified that the tenant did not pay rent of \$5200.00 due on February 1, 2015. The landlord testified that the tenant also did not pay rent of \$5200.00 due on March 1, 2015. The landlord testified that the tenants have now vacated the rental unit but they have not communicated with the landlord since vacating the unit. The landlord testified that the tenants still owe rental arrears totalling \$10400.00. The landlord provided copies of both written and email correspondence between the tenant and the landlord with respect to outstanding rent; the continuation of the tenancy; and the retention of the security deposit provided at the start of this tenancy.

The landlord also applied to recover the \$100.00 filing fee for this application.

Analysis

The undisputed testimony of the landlord is that the tenant failed to pay February 2015 and March 2015 rent to the date of this hearing. Although I found the tenant to be deemed served with this application, the tenant has not attended to dispute this claim of rental arrears owing by the tenant.

I find that the landlord is entitled to receive an order for unpaid rent in the amount of \$10,400.00. The landlord testified that the tenant continued to occupy the rental unit in February and March 2015. The landlord testified that the tenant did not pay monthly rent of \$5200.00 for both February and March 2015 in accordance with the requirements of the tenancy agreement and the *Residential Tenancy Act*. I accept this uncontested evidence offered by the landlord, both in testimony and in documentary evidence including the rental agreement and the notice to end tenancy for unpaid rent as well as correspondence between the landlord and tenant regarding the outstanding rent. I am issuing the attached monetary order that includes the landlord's application for \$10,400.00 in unpaid rent.

The landlord's representative testified that the landlord continues to hold a security deposit of \$2600.00 and a pet damage deposit of \$1000.00 plus any interest from July 18, 2015 to the date of this decision for this tenancy. In accordance with section 72(2) of the *Act* provided below, I will allow the landlord to retain the security deposit *plus interest* in partial satisfaction of the monetary award.

Section 72(2) of the *Act* reads as follows:

72 (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

... (b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant...

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 favour of the landlords as follows:

Rental Arrears for February 2015	\$5200.00
Rental Arrears for March 2015	5200.00
Less Security Deposit	-2600.00
Less Pet Damage Deposit	-1000.00
Recovery of Filing Fee for this application	100.00
Total Monetary Award	\$6900.00

The landlord is provided with this formal Order in the above terms. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order 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: September 9, 2015

Residential Tenancy Branch

