



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF, MT, CNR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his/her/their/its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;

The landlord attended the hearing by conference call and gave undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on July 27, 2015. I accept the landlord's undisputed affirmed testimony that the tenant was served with the notice of hearing package and the submitted documentary evidence on July 27, 2015 and find that the tenant was deemed served as per section 90 of the *Act*.

Preliminary Issue

After waiting 20 minutes past the start of the scheduled hearing time, the conference call hearing proceeded in the absence of the tenant.

The landlord confirmed receipt of the tenant's notice of hearing package on August 7, 2015. The landlord stated that no documentary evidence was provided by the tenant.

While the respondent/landlord attended the hearing by way of conference call, the applicant/tenant did not, although I waited until 9:20 a.m. in order to enable the applicant/tenant to connect with this teleconference hearing scheduled for 9:00 a.m.

Rule 10.1 of the Rules of Procedure provides that:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any evidence or submissions from the tenant/applicant and in the absence of the tenant/applicant's participation in this hearing, I order the application dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

This tenancy began on February 1, 2014 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$875.00 payable on the 1st day of each month and a security deposit of \$435.00 was paid.

The landlord stated that the tenant was served with the 10 Day Notice dated July 16, 2015 which was served in person on July 16, 2015 at the rental premises. The notice

stated that the tenant failed to pay rent of \$1,686.00 that was due on July 1, 2015 and that the tenant also failed to pay utilities of \$73.00 following a written demand on July 7, 2015. The notice also shows an effective end of tenancy date of July 25, 2015.

The landlord clarified that the notice noted at the top of the form that \$811.00 in previous rent arrears and the July 2015 rent of \$875.00 total \$1,686.00 was owed. The landlord also seeks unpaid rent for August, September and October as the tenant has not paid any rent since being served with the 10 Day Notice dated July 16, 2015 and currently occupies the rental premises.

The landlord stated that although she received a text message that the tenant had vacated the rental unit, that this was unconfirmed as the tenant has previously stated this and has failed to vacate the rental premises. The landlord seeks an order of possession and a monetary order for unpaid rent and utilities. This monetary claim totals, \$4,384.00 and consists of:

\$811.00	previous rental arrears dating from September 2014 to June 2015
\$875.00	July 2015 Unpaid Rent
\$73.00	Unpaid Utilities
\$875.00	August 2015 Unpaid Rent
\$875.00	September 2015 Unpaid Rent
\$875.00	October 2015 Unpaid Rent
\$4,384.00	Total

Analysis

I accept the undisputed affirmed testimony of the landlord and find that the tenant was served with the 10 Day Notice dated July 16, 2015 in person on July 16, 2015.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by July 25, 2015. As that has not occurred, I find that the landlord is entitled to a two-day order of possession. The landlord will be given a formal

order of possession which must be served on the tenant(s). If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this order in the Supreme Court of British Columbia.

The landlord has provided sworn and uncontested testimony that the tenant has unpaid rental arrears and unpaid utilities totaling \$4,384.00. I find that the landlord has proven her entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent and utilities.

The landlord testified that she continued to hold the tenant's \$435.00 security deposit. Over that period, no interest is payable, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit 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 \$50.00 filing fee paid for this application.

Conclusion

The tenant's application is dismissed without leave to reapply.
The landlord is granted an order of possession.

The landlord is granted a monetary award under the following terms:

\$811.00	previous rental arrears from September 2014 to June 2015
\$875.00	July 2015 Unpaid Rent
\$73.00	Unpaid Utilities
\$875.00	August 2015 Unpaid Rent
\$875.00	September 2015 Unpaid Rent
\$875.00	October 2015 Unpaid Rent
\$4,384.00	Sub-Total
-\$435.00	Offsetting Security Deposit
\$50.00	Recovery of the Filing Fee
\$3,999.00	Total Monetary Order

The landlord is provided with these orders 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

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

The landlord is provided with a formal copy of an order of possession. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 05, 2015

Residential Tenancy Branch

