



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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;
- 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing by conference call and gave undisputed affirmed testimony. The tenant attended the hearing late at 7 minutes past the start of the hearing and did not 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 October 14, 2015. The tenant disputed the landlord's claim stating that she did not receive the package. The landlord has also submitted the Canada Post Customer Receipt Tracking Receipt as confirmation of service. The landlord stated that an online search of the Canada Post Website shows that the tenant picked up the package on October 15, 2015. I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. The landlord has provided supporting evidence to show that the notice of hearing package and the submitted documentary evidence was picked up by the tenant. The tenant is deemed to have received the notice of hearing package and the submitted documentary evidence as per section 90 of the Act.

On December 11, 2015 the conference call hearing was adjourned to February 5, 2016 to allow the tenant to attend the Residential Tenancy Branch Office in Burnaby to pick up a copy of the landlord's notice of hearing package and the submitted documentary evidence and to provide copies of her rent receipts for proof of rental payments. The

tenant confirmed in her direct testimony that she would be able to do both by 12 noon of the next business day. Both parties were cautioned to not submit further evidence except as noted the tenant's copies of rental receipts and any documentation from the landlord in response.

On February 5, 2016 the hearing was reconvened and both parties attended. The tenant seeks an adjournment as her child has been sick since the last hearing time. The tenant stated that she did not attend the Residential Tenancy Branch (RTB) nor did she submit any documentary evidence to the RTB or the landlord. The landlord objected to the adjournment request as he stated that the tenancy continues to not pay any rent since the 10 Day Notice dated October 2, 2015 was served. In considering the tenant's request, I find that an adjournment would be highly prejudicial to the landlord in the circumstances. The tenant confirmed in her direct testimony that she was able to pick up the landlord's notice of hearing package and the submitted documentary evidence as well as provide crucial evidence of rent receipts to show that rent was paid. The tenant has made no other efforts prior to the adjourned hearing date to request the adjournment or file any supporting evidence. On this basis, I find that an adjournment is too prejudicial to the landlord and the tenant's request is denied. The hearing shall proceed.

Preliminary Issue

During the adjourned hearing the tenant stated that under the advice of her lawyer, she was recording the proceedings. The tenant was cautioned that recordings of the hearing were prohibited. Residential Tenancy Branch, Rules of Procedure 6.11 states,

6.11 Recording prohibited

Persons are prohibited from recording dispute resolution hearings, except as allowed by Rule 6.12. Prohibited recording includes any audio, photographic, video or digital recording.

The tenant stated that she did not care after receiving the caution and would continue to record the proceedings.

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 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 July 1, 2015 on a fixed term tenancy ending on December 31, 2015 as shown by the submitted copy of the signed tenancy agreement dated June 29, 2015. The monthly rent is \$795.00 and a security deposit of \$397.50 was paid.

The landlord stated that the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 2, 2015 by posting on the door on October 2, 2015. The 10 Day Notice shows that rent of \$795.00 was due on October 1, 2015 and displays an effective end of tenancy date of August 15, 2015.

During the hearing it was clarified with both parties that an incorrect effective end of tenancy date does not make the notice invalid. Both parties were informed that the 10 Day Notice would be corrected to reflect an effective end of tenancy date of October 13, 2015.

The landlord seeks an order of possession and a monetary order for unpaid rent of \$2,460.00 which consists of:

\$795.00	Unpaid Rent October 2015
\$795.00	Unpaid Rent November 2015
\$795.00	Unpaid Rent December 2015
\$25.00	Late Rent Fee (October)
\$25.00	Late Rent Fee (November)
\$25.00	Late Rent Fee (December)

During the hearing the landlord stated that the rent continues to be unpaid for January and February. The landlord seeks an additional claim of \$1,590.00 (\$795.00 X 2) for these two additional months of unpaid rent as this is an ongoing issue.

The tenant disputes the landlord's claim stating that all of the rent has been paid and that she is in possession of proof of payment in the form of receipts issued by the landlord. None were provided by the tenant.

Analysis

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's cross claim and my findings around each are set out below.

Based upon the undisputed testimony of the landlord, I find that the landlord served the tenant with the 10 Day Notice dated October 2, 2015 by posting it to the rental unit door. The tenant provided no comment on service of the 10 Day Notice.

Section 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant did not provide sufficient evidence that she paid rent. The tenant was given an opportunity in an adjournment to provide her proof of rent receipts, but failed to do so in a timely manner.

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 landlord testified that the tenant failed to pay any rent for the period following the October 2, 2015 notice until the date of this hearing. The tenant disputed the landlord's claims stating that she had rent receipts issued by the landlord, but has failed to produce any. I find on this basis on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. The tenant has failed to pay any rent since the 10 Day Notice dated October 2, 2015 was served.

As the tenant has failed to pay her rent in full when due, I find that the 10 Day Notice issued October 2, 2015 is valid. The landlord is entitled to possession of the rental unit as of October 13, 2015 the corrected effective date of the 10 Day Notice. As this date has now passed, the landlord is entitled to an order of possession effective two days after it is served upon the tenant(s).

The tenant has failed to provide any evidence of paid rent even after an adjournment was granted for this express purpose. I find that the landlord is entitled to the original amount claimed of \$2,460.00 and the continued unpaid rent of \$1,590.00 for January and February totalling, \$4,050.00.

The landlord having been successful is also entitled to recovery of the \$50.00 filing fee.

The landlord has applied to retain all or part of the \$397.50 security deposit still held. In offsetting the claim under section 72 of the Act, I order that the landlord retain the \$397.50, no interest is payable.

Item	Amount
Unpaid Rent (Oct,Nov,Dec)	\$2,460.00
Unpaid Rent(Jan,Feb)	1,590.00
Less Security Deposit	-397.50
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$3,702.50

Conclusion

The landlord is granted an order of possession.

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.

I issue a monetary order in the landlord's favor for \$3,702.50.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 5, 2016

Residential Tenancy Branch

