



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0896572 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, CNC, CNR, DRI, ERP, AAT, MNDC, MNSD, RP, RR

Introduction

This hearing dealt with applications from both the landlord and the tenant 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 pursuant to section 67;

The tenant has applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order regarding a disputed additional rent increase pursuant to section 43.

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 landlord's notice of hearing package and the submitted documentary evidence in person on January 29, 2016. The landlord has provided a copy of the proof of service document that service was performed in this manner with a witness. The landlord also stated that he was not served with the tenant's application for dispute or any documentary evidence. The landlord clarified that he was aware that the tenant had filed an application for dispute via a handwritten note received from the tenant, but was not given any details of the tenant's application.

I accept the undisputed affirmed testimony of the landlord and find that the tenant was properly served with the landlord's notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act. The tenant is deemed to have received the notice of hearing package and the submitted documentary evidence 3 days later as per section 90 of the Act.

After waiting 21 minutes past the start of the scheduled hearing time with no appearance from the tenant and the landlord confirming that he was not served with the tenant's application for dispute, I order that the tenant's application dismissed with leave to reapply. Leave to reapply is not an extension of any applicable time period.

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?

Background and Evidence

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 claim and my findings are set out below.

This tenancy began on December 1, 2015 on a fixed term tenancy for 6 months and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$900.00 payable on the 1st day of each month and a security deposit of \$450.00 was paid.

The landlord stated that the tenant was served with the 10 Day Notice dated January 17, 2016 by posting it to the rental unit door on January 17, 2016. The landlord has

provided a copy of a proof of service document confirming service in this manner on January 17, 2016 with a witness.

The 10 Day Notice dated January 17, 2016 stated that the tenant failed to pay rent of \$900.00 that was due on January 1, 2016 and displayed an effective end of tenancy date of January 27, 2016. The landlord stated that since the 10 Day Notice was served that no rent has been paid as of the date of this hearing.

The landlord seeks an order of possession and a monetary order for unpaid rent for January, February and March 2016.

Analysis

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 his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by January 27, 2016. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The landlord has provided affirmed and uncontested testimony that the tenant has unpaid rental arrears totaling \$2,700.00 for 3 months (January, February and March). I find that the landlord has proven his entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent totalling, \$2,700.00.

The landlord testified that he continued to hold the tenant's \$450.00 security deposit, plus interest, paid on December 1, 2015. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, 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.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$2,250.00 under the following terms:

Item	Amount
Unpaid January 2016 Rent	\$900.00
Unpaid February 2016 Rent	900.00
Unpaid March 2016 Rent	900.00
Offset Security Deposit	-450.00
Total Monetary Order	\$2250.00

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: March 17, 2016

Residential Tenancy Branch

