



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 an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the landlord for an order of possession for unpaid rent and utilities, for a monetary order for unpaid rent and utilities, for authorization to retain the tenant’s security deposit and to recover the cost of the filing fee.

The landlord and the spouse who was also the agent for the tenant (the “agent”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matters

At the outset of the hearing, the agent requested an adjournment as her husband, the tenant, was in the hospital according to the agent. Rule 7.9 of the Rules of Procedure indicate the following criteria for granting an adjournment:

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party’s request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;

- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

[reproduced as written]

The agent was asked if she was prepared to proceed as agent for her husband given that she resides in the rental unit with her husband. The agent confirmed that she was prepared to proceed. Given that I find there would be prejudice to the landlord to wait for an adjourned hearing given that the claim is for an order of possession based on an undisputed 10 Day Notice and for over \$10,000.00 in unpaid rent, I declined the agent's request for an adjournment as I find the agent was ready and able to proceed and had knowledge of the events of the tenancy as she resides with the tenant and is the spouse of the tenant. As a result, the hearing continued.

In addition to the above, as the parties agreed that no security deposit or pet damage deposit was received from or paid by the tenant to the landlord during the tenancy. As a result, I have not considered the landlord's request to retain the tenants' security deposit as the tenant did not pay a security deposit or pet damage deposit to the landlord.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent under the *Act*?
- Is the landlord entitled to a monetary order for unpaid rent under the *Act*, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The parties agreed that a two year fixed term tenancy began on May 1, 2015. Monthly rent in the amount of \$2,300.00 is due on the first day of each month.

The landlord confirmed that he served a 10 Day Notice for Unpaid Rent or Utilities, (the "10 Day Notice"), dated February 19, 2016 by registered mail on February 19, 2016. A registered mail tracking number receipt was submitted in evidence. According to the online registered mail tracking website, the tenant did not pick up the registered mail package and it was returned to the sender as a result. Section 90 of the *Act* states that documents served by registered mail are deemed served on the fifth day after they are

mailed. As a result, I find the tenant was deemed served with the 10 Day Notice as of February 24, 2016. The agent confirmed that she has seen the 10 Day Notice but could not recall when she received it. The agent stated that the tenant did not dispute the 10 Day Notice. The tenant and the agent continue to occupy the rental unit and have not paid the amount of \$8,900.00 indicated on the 10 Day Notice as owing by the tenant as of December 6, 2015. The effective vacancy date listed on the 10 Day Notice is February 29, 2016.

Regarding the amount of unpaid rent, the landlord stated that the tenant owes the following in unpaid rent and loss of rent:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid portion of May 2015 rent	\$300.00
2. Unpaid portion of June 2015 rent	\$800.00
3. Unpaid portion of July 2015 rent	\$2,300.00
4. Unpaid portion of August 2015 rent	\$300.00
5. Unpaid portion of September 2015 rent	\$1,850.00
6. Unpaid portion of October 2015 rent	\$2,300.00
7. Unpaid portion of November 2015 rent	\$2,000.00
8. Unpaid portion of December 2015 rent	\$1,500.00
9. Unpaid portion of January 2016 rent	\$2,300.00
10. Unpaid portion of April 2016 rent	\$2,300.00
11. Recovery of cost of the filing fee	\$100.00
Subtotal	\$16,050.00
<i>Less \$4,600.00 lump sum payment by tenant</i>	<i>-\$4,600.00</i>
TOTAL OWING BY TENANT TO LANDLORD	\$11,450.00

The landlord testified to the amount owing by the tenant above. The agent stated that while she agrees with many of the amounts, she does not agree to all the amounts claimed. The agent testified that the tenant did not submit any evidence to support how much the tenant paid during the tenancy.

The landlord provided a copy of the 10 Day Notice, registered mail customer receipt with tracking number, tenancy agreement, and correspondence between the parties in evidence. The tenancy agreement submitted in evidence by the landlord does not comply with section 13 of the Act.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of Possession – As described above, I find the tenant was deemed served with the 10 Day Notice and did not file an application to cancel the 10 Day Notice or pay the amount as indicated as owing on the 10 Day Notice. The effective vacancy date of the 10 Day Notice is February 29, 2016. As the tenant failed to provide any evidence of the \$8,900.00 amount owing by the tenant being paid within 5 days of February 24, 2016, the date the tenant was deemed served with 10 Day Notice, and that the tenant did not dispute the 10 Day Notice section 46 of the *Act* applies. Pursuant to section 46 of the *Act*, I find the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice which was listed as February 29, 2016. Accordingly, **I grant** the landlord an order of possession effective **2 days** after service on the tenant. The tenancy ended on February 29, 2016 and the tenant has been over holding in the rental unit since that date.

Claim for unpaid rent and loss of rent – While the parties disputed the amount of rent owing, I find the tenant has provided insufficient evidence to support that any other amounts of rent has been paid by the tenant. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. The tenant continues to occupying the unit. The landlord will not regain possession of the unit until after service of the order of possession. I find the landlord has met the burden of proof and I find the landlord has established a monetary claim of **\$11,350.00**. As the landlord's claim had merit, **I grant** the landlord the recovery of the cost of the filing fee in the amount of **\$100.00** which brings the landlord's total monetary claim to **\$11,450.00**.

Monetary Order – **I grant** the landlord a monetary order pursuant to section 67 of the *Act* in the amount of **\$11,450.00**.

I caution the landlord to use a tenancy agreement that complies with section 13 of the *Act* in the future which is available on the Residential Tenancy Branch website located at: <http://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb1.pdf>

Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective **two days** after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$11,450.00. I grant the landlord a monetary order under section 67 in the amount of \$11,450.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 20, 2016

Residential Tenancy Branch