



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

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

The landlord's agent, S.M. (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on June 2, 2016. The landlord has provided a copy of the Canada Post Customer Receipt Tracking number as confirmation and stated that the package was returned as "unclaimed" by Canada Post after attempts of service was made. I accept the undisputed affirmed evidence of the landlord and find that the tenant has been properly served as per sections 88 and 89 of the Act. Although the tenant did not claim the package, I find pursuant to section 90 of the Act that the tenant is deemed to have received the package 5 days later.

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 and recovery of the filing fee?

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

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 applicant's claim and my findings are set out below.

This tenancy began on February 1, 2016 on a fixed term tenancy until February 1, 2017 as shown by the submitted copy of the signed tenancy agreement dated January 19, 2016. The monthly rent is \$900.00 payable on the 1st day of each month and a security deposit of \$450.00 was paid on January 19, 2016.

The landlord provided affirmed testimony that the tenant was served with a 10 Day Notice for Unpaid Rent (the 10 Day Notice) dated April 23, 2016 in person with a witness on April 23, 2016. The 10 Day Notice states that the tenant failed to pay rent of \$1,800.00 that was due on April 1, 2016. The 10 Day Notice displays an effective end of tenancy date of May 4, 2016.

The landlord seeks an order of possession and a monetary order for unpaid rent for:

\$900.00	Unpaid Rent March 2016
\$900.00	Unpaid Rent April 2016
\$900.00	Unpaid Rent May 2016
\$900.00	Unpaid Rent June 2016

The landlord stated that at the time of issuing the 10 Day Notice the tenant had failed to pay any rent for March and April. The landlord also stated that since the notice was issued that the tenant has not paid any rent and is still occupying the rental unit as of the date of this hearing.

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 May 4, 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 evidence that the tenant has unpaid rental arrears totaling \$3,600.00. 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.

The landlord testified that he continued to hold the tenant's \$450.00 security deposit, plus interest, paid on January 19, 2016. Over that period, no interest is payable.

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

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 the landlord's favour in the amount of \$3,250.00 under the following terms:

Item	Amount
Unpaid March Rent	\$900.00
Unpaid April Rent	900.00
Unpaid May Rent	900.00
Unpaid June Rent	900.00
Offset Security Deposit	-450.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$3,250.00

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: June 30, 2016

Residential Tenancy Branch