



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;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided 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 via Canada Post Registered Mail on May 2, 2016. The landlord stated that the package was returned as "unclaimed" by Canada Post. The landlord has submitted copies of the Canada Post Customer Receipt Tracking number and a copy of the returned envelope as confirmation of service in this manner. I accept the undisputed affirmed evidence of the landlord and find that the tenant was properly served as per sections 88 and 89 of the Act and find that the tenant is deemed to have received the package 5 days later as per section 90 of the Act.

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 an order 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.

The landlord provided undisputed testimony that this tenancy began sometime in 2000 on a month-to-month basis. The landlord stated that the current monthly rent is \$780.00 payable on the 1st day of each month. The landlord stated that a security deposit of \$362.50 was originally paid at the beginning of the tenancy based upon a tenant ledger.

The landlord seeks an order of possession and a monetary order for unpaid rent of \$9,970.00 which consists of:

\$5,290.00	Unpaid Rent based upon 10 Day Notice dated November 12, 2015.
\$780.00	Unpaid Rent, December 2015
\$780.00	Unpaid Rent, January 2016
\$780.00	Unpaid Rent, February 2016
\$780.00	Unpaid Rent, March 2016
\$780.00	Unpaid Rent, April 2016
\$780.00	Unpaid Rent, May 2016
\$9,970.00	Total

The landlord stated that on November 12, 2015 a 10 Day Notice for Unpaid Rent (the 10 Day Notice) was served to the tenant by posting it to the rental unit door. The 10 Day Notice states that the tenant failed to pay rent of \$5,290.00 that was due on November 1, 2015 and displays an effective end of tenancy date of November 22, 2015.

The landlord stated that after repeated attempts at trying to communicate with the tenant and her mother that she could no longer wait to receive rent. The landlord stated that since the 10 Day Notice dated November 12, 2015, no rent has been paid by the tenant as of the date of this hearing. The landlord stated that she can no longer allow the tenant to stay in possession of the rental unit without rent being paid.

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 landlord provided undisputed affirmed testimony that the tenant was served with the 10 Day Notice dated November 12, 2015 by posting it to the rental unit door on November 12, 2015. As such, I find that the tenant was properly served with the 10 Day Notice as per section 88 of the Act and is deemed to have received it 3 days later as per section 90 of the Act.

Based upon the undisputed affirmed evidence of the landlord, I find that the tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice dated November 12, 2015. 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 November 22, 2015. I find that the landlord is entitled to a two-day order of possession as the tenant still occupies the rental unit. 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.

As for the landlord's monetary claim, I find based upon the landlord's undisputed affirmed evidence and that 10 Day Notice dated November 12, 2015 that the landlord has established a claim for unpaid rent of \$5,290.00.

I also find based upon the undisputed affirmed evidence of the landlord that no rent has been paid by the tenant from December 2015 to June 2016 for 7 months while she is still occupying the rental premises. The landlord has also established a claim for unpaid rent of \$5,460.00.

The landlord has established a total monetary claim of \$10,750.00.

The landlord applied to keep the tenant's \$362.50 security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. Although the landlord was not able to provide an exact date for the \$362.50 security deposit, other than to state that it was paid in 2000, I credit the tenant with a date of June 1, 2000. As such, I find that the tenant is entitled to interest of \$28.65 making the total payable amount to be \$391.15.

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 \$1,735.00 under the following terms:

Item	Amount
Unpaid Rent based upon 10 Day Notice	\$5,290.00
Unpaid December 2015 Rent	780.00
Unpaid January 2016 Rent	780.00
Unpaid February 2016 Rent	780.00
Unpaid March 2016 Rent	780.00
Unpaid April 2016 Rent	780.00
Unpaid May 2016 Rent	780.00
Unpaid June 2016 Rent	780.00
Offset Security Deposit	-391.15
Recovery of Filing Fee	100.00
Total Monetary Order	\$10,458.85

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 01, 2016

Residential Tenancy Branch