



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

The tenant did not attend this hearing, although I waited until 0920 in order to enable the tenant to connect with this teleconference hearing scheduled for 0900. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he served the tenant with the dispute resolution package on 29 April 2016 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The landlord testified that he served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 6 April 2016 by handing it to an adult who apparently resided in the rental unit with the tenant. On the basis of this evidence, I am satisfied that the tenant was served with the 10 Day Notice pursuant to paragraph 88(e) 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 award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

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

This tenancy began five to six years ago. Monthly rent is \$1,500.00 and due on the first. The landlord continues to hold a security deposit in the amount of \$750.00, which was collected at the beginning of the tenancy. There is no written tenancy agreement.

On 6 April 2016, the landlord issued the 10 Day Notice to the tenant. The 10 Day Notice was dated 6 April 2016 and set out an effective date of 16 April 2016. The 10 Day Notice set out that the tenant failed to pay \$1,500.00 in rent that was due on 1 April 2016.

The landlord testified that the tenant last paid any amount towards rent in late March 2016. The landlord testified that the current rent arrears total \$4,500.00 for April, May and June. The landlord testified that he is not aware of any reason that would entitle the tenant to deduct any amount from rent.

The landlord testified that will possibly enter into a new tenancy agreement with one of the parties to whom the tenant sublets. The landlord testified that he did not believe he would be able to rerent the rental unit for any portion of June.

The landlord claims for rental arrears totaling \$4,500.00:

Item	Amount
Unpaid April Rent	\$1,500.00
Unpaid May Rent	1,500.00
Unpaid June Rent	1,500.00
Total Monetary Order Sought	\$4,500.00

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 16 April 2016. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The landlord has provided sworn and uncontested testimony that the tenant did not make any contribution towards his use of the rental unit for April, May or June.

Subsection 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 owed rent due 1 April 2016. The tenant did not pay this rent. Pursuant to subsection 26(1) the landlord is entitled to April's rent totaling \$1,500.00.

Pursuant to section 57 of the Act, a landlord may make a claim for compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

The tenancy ended 16 April 2016. On this basis the landlord was not entitled to "rent" under the tenancy agreement, but rather compensation pursuant to subsection 57(3) of the Act on a per diem basis. The landlord testified that the tenant continues to occupy the rental unit as at this date. The order of possession will be effective, at the earliest, two days from the date of this decision. On this basis the landlord is entitled to compensation for the tenant's use and occupancy of the rental unit for May and the period 1 to 5 June 2016: \$1,750.00.

The landlord has not established a rental loss as it is still possible that he could re-rent the unit for some portion of June. Should the landlord experience a rental loss, he is at liberty to apply for this loss after it crystallizes.

The landlord testified that he continued to hold the tenant's \$750.00 security deposit collected five or six years ago. 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.

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 \$2,600.00 under the following terms:

Item	Amount
Unpaid April Rent	\$1,500.00
May Use and Occupancy	1,500.00
June Use and Occupancy	250.00
Offset Security Deposit	-750.00
Recover Filing Fee	100.00
Total Monetary Order	\$2,600.00

The landlord is provided with this order 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 this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order 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 subsection 9.1(1) of the Act.

Dated: June 03, 2016

Residential Tenancy Branch