



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEW CENTURY REAL ESTATE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MND, 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 damage to the unit, site or property pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord's agents (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 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 May 12, 2016 and has provided the Canada Post Customer Receipt Tracking number as confirmation of service in this manner. I accept the undisputed affirmed testimony of the landlord and find that the tenant has been properly served as per sections 88 and 89 of the Act. The tenant is deemed to have been served 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, for damage and recovery of the filing fee?

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 January 15, 2013 on a fixed term tenancy ending on January 14, 2014 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated January 8, 2013. The monthly rent was \$1,550.00 payable on the 15th day of each month and a security deposit of \$775.00 was paid on January 8, 2013. The landlord also provided a copy of a notice of rent increase dated December 17, 2015 which provides that the rent was being increased from \$1,550.00 to \$1,594.95 beginning April 1, 2016.

The landlord provided undisputed affirmed testimony that the tenant was served with the 10 Day Notice dated April 8, 2016 by posting it to the rental unit door on April 8, 2016. The landlord stated that the 10 Day Notice was posted with a witness as shown in the submitted copy of the proof of service document as confirmation. The 10 Day Notice states that the tenant failed to pay rent of \$1,550.00 that was due on March 15, 2016. The 10 Day Notice also displays an effective end of tenancy of April 22, 2016.

The landlord also provided undisputed affirmed testimony that since the 10 Day Notice was served on April 8, 2016 no rent payments have been made as of the date of this hearing.

The landlord provided undisputed affirmed testimony that a dog was discovered in the tenant's rental unit. The landlord stated that a request to the tenant was made to pay a pet damage deposit of \$797.47.

The landlord seeks an order of possession and a monetary order for unpaid rent totalling \$5,537.37 which consists of:

\$1,550.00	March 2016 Unpaid Rent
\$1,594.95	April 2016 Unpaid Rent
\$1,594.95	May 2016 Unpaid Rent
\$797.47	Request for Pet Damage Deposit

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The landlord has failed to provide any details of the claim for damage, on this basis this portion of the landlord's claim is dismissed.

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 dated April 8, 2016. The tenant has not made application pursuant to subsection 46(4) of the *Act* within five days of receiving the 10 Day Notice dated April 8, 2016. 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 April 22, 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 \$4,739.90. 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 seeks payment of a \$797.47 pet deposit. As the tenancy is ending, I decline to order that any pet deposit be paid from the tenant to the landlord.

The landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$4,839.90 under the following terms:

Item	Amount
Unpaid March Rent	\$1,550.00
Unpaid April Rent	1,594.95
Unpaid May Rent	1,594.95
Recovery of Filing Fee	100.00
Total Monetary Order	\$4,839.90

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 10, 2016

Residential Tenancy Branch