



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant: MT, CNR, AS
Landlord: OPR, MNR, MNDC, FF

Introduction

This hearing was convened in response to cross applications by both parties pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows. The tenant applied July 15, 2016:

1. More time to file an application to cancel a Notice to End – Section 66, *if successful*
2. to cancel a Notice to End Tenancy for Unpaid Rent – Section 46
3. allow a tenant to assign or sublet – Section 65

The landlord applied July 19, 2016 for:

1. An Order of Possession - Section 55
2. A Monetary Order for unpaid rent - Section 67
3. A monetary Order for damage or loss – Section 67
4. An Order to recover the filing fee for this application - Section 72

The applicant tenant was provided with a copy of the Notice of a Dispute Resolution Hearing dated July 18, 2016 after filing their application. The landlord testified they received the tenant's application. The tenant, however, did not attend the hearing set for today at 9:30 a.m. The phone line remained open during the hearing of 15 minutes and was monitored throughout this time. The only party to call into the hearing was the landlord. As a result, the tenant's application was preliminarily **dismissed**. The landlord testified the tenant still resides in the unit.

I accept the landlord's evidence that the tenant was served with the application for dispute resolution, notice of hearing, and their evidence sent by registered mail and for which the landlord provided proof of such service. Despite the tenant's lack of attendance the landlord was given opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid in the approved form?
Is the landlord entitled to an Order of Possession?
Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began March 01, 2015. I have benefit of the recent tenancy agreement as well as the notice to end. Rent in the amount of \$1595.00 is payable in advance on the first day of each month. The tenant failed to pay rent in the month of July 2016 and on July 9 and again on July 12, 2016 the landlord served the tenant with a notice to end tenancy for non-payment of rent stating the tenant owed the rent and additional administrative fees for return of the tenant's cheques. The tenant applied to dispute the notices but the landlord claims they have not paid the rent for July, August 2016. The tenant further failed to pay rent and utilities for the current month of September 2016.

The landlord claims the unpaid rent for the outstanding 3 months, plus 2 administrative fees for insufficient funds of \$50.00 per occurrence, and late fees of \$3.00 per day, all as stated in the tenancy agreement.

Analysis

Based on the landlord's evidence I find that the tenant was served with a notice to end tenancy for non-payment of rent and utilities and I find the notice to be in the approved form and is valid. The tenant has not paid the outstanding amounts of rent despite their application to dispute the landlord's Notice, and further did not attend the hearing to defend their application: with the result that their application has been **dismissed**.

Based on the above facts I find that the landlord is entitled to an **Order of Possession**.

Section 7(d) of the Act Regulations states as follows,

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

I find the landlord's terms of their tenancy agreement prescribing a late payment of \$3.00 per day, as well as \$50.00 for the return of a tenant's cheque, as contrary to the

Act Regulations and therefore unenforceable. As a result those portions of the landlord's claim are **dismissed**.

I find that the landlord has established a monetary claim for unpaid rent. The landlord is also entitled to recovery of the filing fee.

Calculation for Monetary Order

Unpaid rent July 2016	\$1595.00
Unpaid rent August 2016	\$1595.00
Unpaid rent September 2016	\$1595.00
Filing fee for the cost of this application	\$100.00
Total Monetary Award / landlord	\$4885.00

Conclusion

The tenant's application is **dismissed**, without leave to reapply. The landlord's application in relevant part is granted.

I grant an Order of Possession to the landlord **effective 2 days from the day it is served on the tenant**. The tenant must be served with this Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I grant the landlord an Order under Section 67 of the Act for the amount of **\$4885.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: September 06, 2016

Residential Tenancy Branch