



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC ONE MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

An agent for the landlord (the "agent") attended the teleconference hearing. During the hearing the agent was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The agent testified that the Notice of Hearing, Application and documentary evidence were served on the tenant by personal service at the rental unit at approximately 7:30 p.m. on August 15, 2016. The agent stated that the tenant accepted the package from the agent. Based on the above and without any evidence to prove to the contrary, I accept that the tenant was sufficiently served in accordance with the *Act* on August 15, 2016.

Preliminary and Procedural Matter

The agent testified that in addition to the rent owing up to February 1, 2016 in the amount of \$10,790.00, the landlord has subsequently suffered a loss of rent for September and October of 2016 at \$750.00 for each month. As a result, the agent requested to amend the application to include loss of rent of \$750.00 for September 2016 and loss of rent of \$750.00 for October 2016. The agent also stated that the tenant continues to occupy the rental unit. I find that the agent's request to amend the application does not prejudice the respondent tenant as the tenant would be aware or

ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, pursuant to section 64(3) of the *Act* I amend the application to include an additional \$1,500.00 for loss rent for the months of September and October of 2016.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The agent testified that a month to month tenancy began on July 10, 2011 and that monthly rent in the amount \$750.00 was due on the first day of each month, which was not increased during the tenancy. The tenant paid a \$375.00 security deposit at the start of the tenancy, which the landlord continues to hold.

The landlord applied for dispute resolution on August 12, 2016. A 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 1, 2016 (the "10 Day Notice") was submitted in evidence. The agent testified that the tenant was served on February 1, 2016 via personal service at the rental unit. The 10 Day Notice indicates that \$10,790.00 was owed as of February 1, 2016. The agent stated that the tenant did not dispute the 10 Day Notice and continues to occupy the rental unit without paying rent.

The landlord is seeking a monetary order as follows:

Item Description	Amount Claimed
1. Rent arrears up to and including February 1, 2016	\$10,790.00
2. Loss of rent for September 2016	\$750.00
3. Loss of rent for October 2016	\$750.00
4. Recovery of cost of the filing fee	\$100.00
TOTAL MONETARY CLAIM	\$12,390.00

The agent provided undisputed testimony confirming the amounts described in the table above.

Analysis

Based on the undisputed documentary evidence from the landlord and the undisputed testimony of the agent, and on the balance of probabilities, I find the following.

Order of Possession - I find that the tenant failed to pay the rent or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice, and that the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date on the 10 Day Notice which in the matter before me is February 11, 2016. The tenant continues to occupy the rental unit. Accordingly, pursuant to section 55 of the *Act*, I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

Monetary claim of landlord – The agent testified that the tenant failed to pay a total of \$10,790.00 in rent up to and including February 1, 2016. The agent also stated that the tenant continues to occupy the rental unit and that the landlord has suffered a loss of rent for the months of September and October 2016 as claimed. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find the tenant breached section 26 of the *Act* by failing to pay all of the rent as claimed and that the landlord has suffered a loss of rent as claimed. Therefore, I find the landlord has met the burden of proof and is entitled to **\$12,290.00** in unpaid rent and loss of rent as claimed.

As the landlord's application had merit, I grant the landlord the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*.

I find that the landlord has established a total monetary claim of **\$12,390.00** comprised of \$12,290.00 in unpaid rent and loss of rent, plus the recovery of the cost of the filing fee in the amount of \$100.00. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit, which the landlord continues to hold, in the amount of \$375.00, which has accrued \$0.00 in interest to date.

I authorize the landlord to retain the tenant's full security deposit of \$375.00 in partial satisfaction of the landlord's monetary claim, and I grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of **\$12,015.00**.

Conclusion

The landlord's application is successful.

The tenancy ended on February 11, 2016. The tenant has been over-holding the rental unit since that date. The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$12,390.00 as indicated above. The landlord has been authorized to retain the tenant's full security deposit of \$375.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order under section 67 for the balance due by tenant to the landlord in the amount of \$12,015.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 6, 2016

Residential Tenancy Branch