



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAXSAVE REAL ESTATE SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNR OPR

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution by Direct Request, received at the Residential Tenancy Branch on August 16, 2016 (the "Application"). In an adjudicator's decision, dated August 19, 2016, the matter was set to be heard at a participatory hearing.

The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent; and
- an order of possession for unpaid rent.

The Landlord was represented at the hearing by L.S., who provided her solemn affirmation. The Tenant did not attend the hearing.

On behalf of the Landlord, L.S. testified the Notice of Reconvened Hearing, and the evidence upon which the Landlord intended to rely, was served on the Tenant by registered mail on August 31, 2016. A copy of a Canada Post registered mail receipt was included with Landlord's documentary evidence. Pursuant to section 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Notice of Reconvened Hearing and the Landlord's documentary evidence is deemed to have been received by the Tenant on September 5, 2016.

L.S. was given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent?

2. Is the Landlord entitled to an order of possession for unpaid rent?

Background and Evidence

The Landlord submitted into evidence a copy of the written tenancy agreement between the parties. It confirmed a fixed-term tenancy from May 1, 2015 to October 31, 2015; thereafter, the tenancy continued on a month-to-month basis. Initially, rent in the amount of \$750.00 per month was due and payable on the first day of each month. However, pursuant to a Notice of Rent Increase dated April 28, 2016, submitted with the Landlord's documentary evidence, rent increased to \$771.00 per month, effective August 1, 2016. The Tenant paid a security deposit of \$375.00 at the beginning of the tenancy.

On behalf of the Landlord, L.S. provided oral testimony regarding the payment of rent. She confirmed that, as of August 1, 2016, rent was overdue in the amount of \$3,086.00. Since that date, partial payments of \$600.00 and \$400.00 have been received, but \$3,628.00 remains outstanding. Included with the Landlord's documentary evidence was a spreadsheet showing the history of rent payments from August 1, 2015 to August 1, 2016. The Landlord confirmed the Tenant continues to live in the rental unit.

In light of the overdue rent payments, the Landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 6, 2016 (the "10 Day Notice"). The 10 Day Notice was served by posting a copy to the door of the Tenant's rental unit. Included with the Landlord's documentary evidence was a Proof of Service form confirming service of the 10 Day Notice on August 6, 2016 was witnessed by a third party, A.M.

Analysis

Based on the affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 46 of the Act permits a landlord to end a tenancy when rent remains unpaid on any day after the day it is due by issuing a notice to end tenancy. On receipt of a notice to end tenancy, a tenant has 5 days to either file an application for dispute resolution or pay the rent. Failing to do either of these results in the conclusive presumption that the tenancy ends on the effective date of the notice.

The Landlord's unchallenged evidence is that the Tenant has not paid rent in full and continues to occupy the rental unit. I have no evidence to the contrary before me. Accordingly, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice. The tenancy is ended. I grant the Landlord an order of possession, which will be effective one (1) day after service on the Tenant.

Further, I find the Landlord has demonstrated an entitlement to \$3,628.00 for unpaid rent, and \$100.00 as recovery of the filing fee. The Landlord wished to apply the security deposit of \$375.00 in partial satisfaction of any monetary award granted, which I allow.

In light of the above, and pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$3,353.00, which has been calculated as follows:

Item	Amount
Unpaid rent:	\$3,628.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$375.00)
TOTAL:	\$3,353.00

Conclusion

I grant the Landlord an order of possession, which will be effective one (1) day after service on the Tenant. This Order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

In addition, I grant the Landlord a monetary order in the amount of \$3,353.00. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

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: October 14, 2016

Residential Tenancy Branch