



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 was convened as a result of the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on August 23, 2016, and amended on October 4, 2016 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- an order of possession for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss; and
- a monetary order granting recovery of the filing fee.

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

On behalf of the Landlord, S.A. testified that the Tenant was served with the Notice of a Dispute Resolution Hearing on August 24, 2016. I find the Notice of a Dispute Resolution Hearing was received by the Tenant on that date.

Further, S.A. testified that the amended application and the evidence upon which the Landlord intended to rely was served on the Tenant in person on October 5, 2016. I find the amended application and the evidence upon which the Landlord intended to rely was received by the Tenant on that date.

On behalf of the Landlord, S.A. was given an 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 an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

Although a written tenancy agreement was not provided, S.A. testified as to the terms of the tenancy. Rent in the amount of \$1,500.00 per month is due on the first day of each month. According to S.A., the Tenant paid a security deposit of \$750.00 at the beginning of the tenancy.

According to S.A., rent has not been paid by the Tenant since April 1, 2016, a period of seven months. Although \$10,500.00 remains outstanding, the Tenant continues to occupy the rental unit.

As the Tenant did not pay rent when due, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 12, 2016 (the "10 Day Notice"). The 10 Day Notice was served on the Tenant by attaching a copy to the door of the Tenant's rental unit on August 12, 2016. The Landlord's documentary evidence included a Proof of Service form confirming service in that manner.

Analysis

Based on the unchallenged and affirmed oral testimony, the documentary evidence submitted by the Landlord, and on a balance of probabilities, I find:

When a tenant does not pay rent when it is due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy and wishes to dispute it has 5 days to either pay rent or file an application for dispute resolution. When a tenant does not pay rent or file an application for dispute resolution in the applicable time period, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

Pursuant to section 90 of the *Act*, a document served by posting a copy to the door of a tenant's rental unit is deemed to be received three days later. Accordingly, I find the Tenant is deemed to have received the 10 Day Notice on August 15, 2016. However, the Tenant did not pay rent or file an application for dispute resolution in the applicable time period. Accordingly, the Tenant is conclusively presumed to have accepted the end of the tenancy. As a result, I find the Landlord is entitled to an order of possession, which will be effective one (1) day after service on the Tenant.

Further, section 26 of the *Act* confirms that a tenant must pay rent when due unless the tenant has a right under the *Act* to deduct all or a portion of rent. In this case, S.A. testified, and I find, that the Tenant has not paid rent since April 1, 2016, and that rent in the amount of \$10,500.00 remains outstanding. Accordingly, I am satisfied the Landlord has demonstrated an entitlement to an award of \$10,500.00 for unpaid rent.

Having been successful, I find the Landlord is also entitled to recover the \$100.00 filing fee paid to make this Application.

The Landlord's agent requested that the security deposit be applied in partial satisfaction of this monetary award, which I allow. Accordingly, pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$9,850.00, which has been calculated as follows:

Item	Amount
Outstanding rent:	\$10,500.00
Filing fee:	\$100.00
<i>LESS security deposit:</i>	<i>(\$750.00)</i>
TOTAL:	\$9,850.00

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 and enforced as an order of the Supreme Court of British Columbia.

In addition, I grant the Landlord a monetary order in the amount of \$9,850.00. This Order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 18, 2016

Residential Tenancy Branch