



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution dated September 15, 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;
- an order allowing the Landlord to keep all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

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

On behalf of the Landlord, Y.B. testified that the Tenant was served with the Landlord's Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, by registered mail on September 20, 2016. According to Y.B., tracking information confirmed these documents were received by the Tenant on September 23, 2016. I find the Tenant was duly served with the Landlord's Application package on September 23, 2016.

The Landlord's agent 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 a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
3. Is the Landlord entitled to an order allowing it to keep all or part of the security deposit or pet damage deposit?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlord submitted a copy of the tenancy agreement between the parties into evidence. It confirms a month-to-month tenancy began on September 1, 2012. Y.B. testified rent is currently due in the amount of \$530.00 per month on the first day of each month. This amount includes a parking fee of \$20.00 per month. At the beginning of the tenancy, the Tenant paid a security deposit of \$435.00.

On behalf of the Landlord, Y.B. testified that rent in the amount of \$530.00 was not paid when due on September 1, 2016. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 2, 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 September 2, 2016.

Y.B. testified that the Tenant paid overdue rent on September 15, 2016. Although the Tenant also paid rent for the month of October 2016, rent for November 2016 has not been paid. Accordingly, the Landlord's claim is for unpaid rent for the month of November 2016 in the amount of \$530.00, plus \$100.00 in recovery of the filing fee.

In addition, Y.B. confirmed the Tenant has provided the Landlord with a notice to end tenancy.

Analysis

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

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when 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 five 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, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In this case, the Landlord testified, and I find, that the Tenant did not pay rent when due on September 1, 2016. Accordingly, the Landlord served the Tenant with the 10 Day Notice on September 2, 2016, by posting a copy to the door of the Tenant's rental unit. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received three days later. Accordingly, I find that the 10 Day Notice is deemed to have been received by the Tenant on September 5, 2016.

As noted above, a tenant has five days after receiving a notice to end tenancy for unpaid rent to either pay rent or make an application for dispute resolution. In this case, the Tenant has done neither. Although the Tenant subsequently paid rent on September 15, 2016, she did so late. 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 two (2) days after service on the Tenant.

The Landlord testified that although September and October rent have been received, November rent remains outstanding. Accordingly, I find the Landlord is entitled to a monetary award of \$530.00 for rent for November 2016.

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

During the hearing, the Landlord requested that the security deposit (\$435.00) be applied to any monetary order I grant, which I allow. Accordingly, pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$195.00, which consists of \$530.00 for unpaid rent and \$100.00 for recovery of the filing fee, **less** the security deposit of \$435.00.

Conclusion

I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant. This Order may be filed in and enforced as an order of the Supreme Court of British Columbia.

I grant the Landlord a monetary order in the amount of \$195.00. 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: November 14, 2016

Residential Tenancy Branch