



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent and utilities - Section 67;
3. An Order to recover the filing fee for this application - Section 72.

I accept the landlord's evidence that despite the tenant having been personally served with the application for dispute resolution and notice of hearing in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing. The landlord further provided they had given to the tenant all of the evidence provided to this hearing.

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?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The undisputed testimony / evidence is that the tenancy began in June 2016 as a verbal tenancy agreement. Rent in the amount of \$950.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$475.00, retained in trust. The tenant failed to

pay rent in the month of August and September 2016 and on September 04, 2016 the landlord personally served the tenant with a notice to end tenancy for non-payment of rent and further posted the notice on the tenant's door. The tenant has further failed to pay rent in the month of October and November 2016.

The notice to end also states the tenant failed to pay utilities charges in the amount of \$1075.96, claimed by the landlord to be charges for movie rentals placed on the landlord's cable service utility invoice. The landlord testified they provided the tenant with a copy of the cable utility invoice on August 26, 2016 to indicate to the tenant, and notify them, as to their responsibility for the movie rental charges.

The landlord seeks an order of possession, and a monetary order for the unpaid rent and movie charges.

On the basis the landlord has already provided the tenant with the respective utilities invoice the landlord was permitted to forward a copy of same invoice to this hearing.

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 I find the notice to be valid. The tenant has not paid the outstanding rent and has not applied for Dispute Resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an **Order of Possession**.

I also find that the landlord has established a monetary claim for all unpaid rent.

In respect to the utilities charges for movie rentals I find that movie rental charges are not part of the cable utility, but rather an adjunct to the invoicing for the rental service. None the less, the landlord's application is clear they seek to recover these charges despite the fact the landlord has not applied for loss. Therefore, I will allow the landlord's claim in this regard. On review of the landlord's evidence respecting movie rentals I calculate that movie rentals account for \$1092.24 inclusive of taxes. As a result, I grant the landlord their lesser claim on application for \$1075.96.

The landlord is also entitled to recovery of the \$100.00 filing fee. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

Rental Arrears = August, September, October, November 2016: \$950.00 x 4	\$3800.00
Loss = movie rentals by tenant	1075.96
Filing Fees for the cost of this application	100.00
<i>Less Security Deposit held</i>	<i>-475.00</i>
Total Monetary Award to landlord	\$4500.96

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 Order that the landlord retain the security deposit of \$475.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$4500.96**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application, in relevant part has been granted.

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: November 15, 2016

Residential Tenancy Branch