



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested an Order of Possession and Monetary Order for unpaid rent or utilities, and to recover the filing fee.

Only the Landlord appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified he served the Tenant with the Notice of Hearing and his Application on September 30, 2016 by registered mail. The Landlord testified that he was informed that the Tenant failed to pick up the package.

Residential Tenancy Policy Guideline, "12. Service Provisions" provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Under the *Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of October 5, 2016 and I proceeded with the hearing in his absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the

evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Landlord testified that the Tenant vacated the rental unit as of the end of October 2016 such that the Landlord no longer required an Order of Possession.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant for unpaid rent or utilities?
2. Should the Landlord recover the \$100.00 filing fee?

Background and Evidence

The Landlord testified that the tenancy began approximately 10 years ago. The Landlord testified that the monthly rent at the end of the tenancy was \$475.00.

Introduced in evidence was a copy of a 10 Day Notice for Unpaid Rent or Utilities indicting the sum of \$13,475.00 was due and owing as of September 1, 2016 (the "Notice"). The Landlord testified that on September 4, 2016 he left a message on the Tenant's cell phone as well as sending the Tenant an email advising him that he would be serving the Notice by leaving on the Tenant's coffee table. A copy of this email was in evidence and clearly shows the Landlord informed the Tenant of the amount claimed by the Landlord.

The Landlord also testified that on September 27 at 10:12 a.m. he received a response email from the Tenant wherein the Tenant confirms he owed the Landlord the amounts claimed and that he would be moving out of the rental unit.

The Landlord stated that he spoke to the Tenant about the Notice on several occasions and that the Tenant admitted he owed the amount of rent indicated on the Notice (\$13,475.00) and that he was trying to get a loan to pay the Landlord.

The Landlord stated that after issuing the Notice, the Tenant paid \$500.00 in September of 2016 such that the amount owing was \$12,975.00 at the time he filed his Application for Dispute Resolution. As the Tenant was in occupation of the rental unit in October the Landlord also sought recover of \$475.00 for rent for October. The Landlord

confirmed that the amount owing as of the date of the hearing, and the amount for which he sought a Monetary Order was \$13,450.00 in addition to recovery of the filing fee.

Analysis

Based on the undisputed evidence and testimony before me I find as follows.

I find that the Tenant was required to pay rent in the amount of \$475.00. I accept the Landlord's evidence that for a significant portion of time during the tenancy the Tenant failed to pay rent as required. I accept the Landlord's evidence that at the time of the hearing the sum of \$13,450.00 was owed by the Tenant to the Landlord for unpaid rent.

The Landlord testified that on September 10, 2016 he served the Tenant the Notice by leaving it on the Tenant's coffee room table. He further testified that prior to doing this he sent the Tenant an email and left a voicemail message informing the Tenant the Notice would be on his coffee table. The Landlord stated that due to the location of the heater, as well as the Tenant's frequent absences from the rental unit for work, the Tenant allowed the Landlord to enter the rental unit whenever it was necessary. The Landlord further stated that the Tenant acknowledged receipt of the Notice.

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

While the arrangement between the Landlord and the Tenant regarding the Landlord's access to the rental unit is not common, I find that the Tenant's coffee table is an "other conspicuous place" as contemplated by section 88 and I therefore find the Tenant was served the Notice in accordance with the *Act*. Pursuant to section 90(c), the Tenant is deemed served three days later, namely September 13, 2016.

The Notice informed the Tenant he had five days from the date of service to pay the rent or dispute the Notice. I accept the Landlord's evidence that save and except for the aforementioned \$500.00 the Tenant failed to pay the outstanding rent and failed to dispute the Notice.

Section 46(5) provides that a Tenant who fails to dispute a 10 Day Notice within five days of service is conclusively presumed to accept the end of the tenancy and must vacate the rental unit. In this case the Tenant had vacated the rental unit prior to the hearing.

I accept the Landlord's undisputed evidence as to the amount owing by the Tenant for rent. I note that the amounts claimed (when the \$500.00 payment made in September is factored in) are consistent on the Notice, the Application for Dispute Resolution as well as the email sent to the Tenant on September 4, 2016. Accordingly, I find the Tenant was given sufficient notice of the amounts claimed. The Tenant failed to dispute the Landlord's claim and failed to attend the hearing. In the circumstances, I find the Landlord has proven his claim for \$13,450.00 in unpaid rent and I award him compensation for the amount claimed.

Conclusion

Having been substantially successful, I also grant the Landlord recover of the \$100.00 filing fee for a total monetary award in the amount of **\$13,550.00**. The Landlord is granted a Monetary Order in this amount and must serve a copy of it on the Tenant as soon as possible. Should the Tenant fail to pay the Landlord may file and enforce the Monetary Order in the B.C. Provincial Court (Small Claims Division).

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 22, 2016

Residential Tenancy Branch