



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant did not attend this hearing, which lasted approximately 30 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 11, 2016 (the "10 Day Notice"), on that same date, by way of posting the 10 Day Notice to the rental unit door. The landlord testified that his wife posted the 10 Day Notice with the landlord witnessing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on October 14, 2016, three days after its posting.

The landlord testified that the tenant was served with the landlord's application for dispute resolution by direct request on October 22, 2016, by way of both registered mail and posting to the rental unit door. The landlord provided a Canada Post tracking number and photographs of the application package being posted on the rental unit door. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' application on October 25, 2016, three days after its posting.

The landlord testified that he received the Interim Decision of the Residential Tenancy Branch adjourning the Direct Request process to a participatory hearing on November

7, 2016. The landlord testified that the Interim Decision was delivered in person to the tenant on that same date. In accordance with section 89 of the *Act*, I find that the tenant was served personally with the Interim Decision on November 7, 2016.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

The landlord provided testimony regarding the following facts. This month-to-month tenancy began in January, 2011. The current rent is \$1,525.00 payable on the 1st of the month. No security deposit was ever paid by the tenant. The tenant continues to reside in the rental unit at the time of the hearing.

The landlord gave evidence that the total amount of arrears for this tenancy is \$2,575.00. The landlord provided copies of three cheques from the tenant, each for the amount of \$1,525.00 that were returned NSF. The landlord gave evidence that the tenant failed to pay the rental amount for the months of August, September, and October, 2016. The landlord gave evidence that the tenant made partial payment of \$2,000.00 on September 28, 2016 but there still remains an outstanding balance of \$2,575.00 for this tenancy.

The landlord testified that the tenant has made payment for the November rent on November 1st, 2016 but the tenancy has not been reinstated and the payment was accepted for use and occupancy only. The landlord gave evidence that the Interim Decision was served on the tenant on November 7, 2016 after the date of the rent payment confirming the landlord's intention to proceed with the application.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenant was obligated to pay the monthly rent in the amount of \$1,575.00. I accept the evidence before me that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did they dispute the 10 Day Notice within that 5 day period. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, October 24, 2016.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$2,575.00.

Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act* and a Monetary Order for unpaid rent owing of \$2,575.00 as at November 22, 2016, pursuant to section 67 of the *Act*.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$2,575.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: November 24, 2016

Residential Tenancy Branch