



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

On October 12, 2016, the Landlord submitted an Application for Dispute Resolution for an order of possession, and for a monetary order for unpaid rent or utilities. The matter was set for a conference call hearing.

The Landlord attended the teleconference hearing; however, the Tenant did not. The Landlord testified that she served the Tenant with the Application for Dispute Resolution and Notice of Hearing, by registered mail sent on October 14, 2016. A Canada Post tracking number was provided as evidence of service. The Landlord testified that the Tenant picked up the registered mail on October 20, 2016. I find that the Tenant has been duly served with the notice of hearing in accordance with sections 89 and 90 of the *Residential Tenancy Act* ("the Act").

The Landlord was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

Is the Landlord entitled to an order of possession for unpaid rent?
Is the Landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The Landlord testified that the tenancy began on October 28, 2010. Monthly rent is determined as a percentage of income. The Landlord provided a copy of the tenancy agreement. The tenancy agreement states that the Tenant agrees to sign a declaration regarding gross income at least once in every 12 month period, and from time to time as required by the Landlord.

The Landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("the Notice") dated October 3, 2016 to the Tenant by mail on October 3, 2016.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the

Notice. The Notice states that the Tenant has failed to pay rent in the amount of \$3,245.40.

There is no evidence before me that that the Tenant made an application to dispute the Notice.

The Landlord testified that the Tenant owes rent in the following amounts:

January 2016	\$435.00
February 2016	\$435.00
March 2016	\$321.00
April 2016	\$321.00
May 2016	\$321.00
August 2016	\$188.00
September 2016	\$368.00
October 2016	\$368.00
November 2016	\$368.00
total	\$3,125.00

The Landlord testified that the Tenant paid \$518.00 towards rent on October 27, 2016.

The Landlord testified that the Tenant has not paid any other amount towards rent.

The Landlord requested to amend the Application to include unpaid rent for the month of December 2016, in the amount of \$368.00. The Landlord testified that the Tenant has not paid rent for December 2016, and the Landlord has suffered a loss of this rent.

The Landlord seeks an order of possession and a monetary order for unpaid rent in the amount of \$3,493.00

The Landlord is seeking to recover the cost of the Application for dispute resolution.

Analysis

Based on the evidence before me, and the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant has not paid the outstanding rent within five days of receiving the Notice, and did not apply to dispute the Notice, and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find that the Tenant owes the Landlord \$3,125.00 rent. I find that the Tenant paid \$518.00 on October 27, 2016, and the amount of rent arrears owing to the Landlord is \$2,607.00.

I grant the Landlord's request to amend the Application to include a claim of \$368.00 for December 2016, rent. The Tenant knows that rent has to be paid when its due under the tenancy agreement and the Landlord has suffered a loss of rent for December 2016. The Tenant owes the Landlord \$2,975.00 for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$3,075.00 comprised of \$2,975.00 in unpaid rent for the above mentioned dates and the \$100.00 fee paid by the Landlord for this hearing. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession and I grant a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$3,075.00.

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: December 02, 2016

Residential Tenancy Branch