



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The landlord's agent testified that the tenant was served the hearing documents by posting them to the tenant's door on October 26, 2016.

Service issues –

With regard to the landlord's application for a Monetary Order for unpaid rent; for money owed or compensation for damage or loss; and for an Order to be permitted to keep all or part of the security deposit; sections 88 and 89 of the *Act* determine the method of service for documents. The landlord has applied for Monetary Orders which requires that the landlord serve the tenant as set out under Section 89(1). As the landlord posted the Notice for Dispute Resolution to the tenant's door, this method of service is not acceptable under section 89(1) of the *Act*. Consequently, this section of the landlord's application is dismissed with leave to reapply. The hearing continued to deal with the landlord's application for an Order of Possession.

The landlord and her agent appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was

no appearance for the tenant, despite being served notice of this hearing in accordance with s. 89(2) of the *Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

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

Background and Evidence

The landlord's agent testified that the tenant was served with a 10 Day Notice to End Tenancy for unpaid rent (the Notice) in person on October 19, 2016. A copy of the Notice has been provided in documentary evidence. The Notices indicates that the tenant had failed to pay rent of \$1500.00 which was due on October 28, 2016. The Notice had an effective date of October 28, 2016.

The landlord's agent testified that the tenant gave written notice to end the tenancy no later than November 19, 2016 yet the tenant failed to vacate the rental unit on that date. The landlord's agent testified that the tenant owes rent for the following months:

Month due	Rent paid	Rent owed
August	\$250.00	\$750.00
September	\$250.00	\$750.00
October	\$250.00	\$750.00
November	\$250.00	\$750.00
December	\$0.00	\$1,000.00

The landlord's agent testified that as the tenant now owes rent of \$4,000.00 the landlord seeks an Order of Possession of the rental unit as soon as possible.

Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's undisputed evidence before me.

I refer the parties to s. 26 of the *Act* which states:

26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied from the undisputed evidence before me that there is outstanding rent of \$4,000.00. I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Notice is deemed to have been served on October 19, 2016. The tenant did not pay the outstanding rent within five days and the tenant did not apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, 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 Notice. As this date has since passed I grant the landlord an Order of Possession pursuant to s. 55 of the *Act*.

I find that the landlord is entitled to be reimbursed for the **\$100.00** cost of filing this application. I order that the landlord retain this amount from the security deposit \$500.00 leaving a balance \$400.00 which must be returned to the tenant or otherwise dealt with in compliance with section 38 of the *Act*.

Conclusion

The landlord has been issued an Order of Possession effective **two (2) days** after service upon the tenant pursuant to section 55(1) of the *Act*. This Order must be served on the tenant. If the tenant remains in Possession of the rental unit and does not relinquish that possession to the landlord then the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The remainder of the landlord's application not heard today is dismissed with leave to reapply.

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 14, 2016

Residential Tenancy Branch