



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPL, MNR

This hearing 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;
- an Order of Possession for landlord's use of property 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 15 minutes. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, the landlord requested permission to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed the tenant has failed to pay the December rent amount and that the rental arrears as of the date of the hearing was \$800.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlord's Application to increase the landlord's monetary claim from \$400.00 to \$800.00.

The landlord testified that the landlords' application for dispute resolution dated November 18, 2016 was sent to the tenant by registered mail on November 25, 2016. The landlord provided a Canada Post tracking number. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on November 30, 2016, five days after its mailing.

Issue(s) to be Decided

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

Is the landlord entitled to an Order of Possession for landlord's use of property?

Is the landlord entitled to a monetary order for unpaid rent as claimed?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This month to month tenancy began on June 1, 2007. The current rent is \$400.00 payable on the 1st of the month. No security deposit was paid at the start of the tenancy.

The landlord testified that a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice"), dated October 19, 2016 was served on the tenant by registered mail on October 20, 2016. The landlord provided a Canada Post tracking number to confirm that registered mailing. In accordance with sections 88 and 90 of the Act, I find that the tenant was deemed served with the landlord's 2 Month Notice on October 25, 2016, five days after mailing.

The landlord testified that a second 2 Month Notice to End Tenancy for Landlord's Use of Property (the "second 2 Month Notice"), dated October 23, 2016 correcting some errors in the first 2 Month Notice was served on the tenant by registered mail on the same date. The landlord provided a Canada Post tracking number to confirm that registered mailing. In accordance with sections 88 and 90 of the Act, I find that the tenant was deemed served with the landlord's second 2 Month Notice on October 28, 2016, five days after mailing.

The landlord testified that the tenant failed to pay the rent owing for November 1, 2016 and he served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), dated November 4, 2016 personally on the tenant on that day. In accordance with section 89 of the Act, I find that the tenant was served with the landlord's 10 Day Notice on November 4, 2016.

The landlord testified that at the time the 10 Day Notice was issued the tenancy was in arrears by \$400.00, the amount initially sought in the 10 Day Notice. The landlord testified that the tenant has made no payments and the total amount owing for the tenancy as of December 21, 2016, the date of the hearing, is \$800.00.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I accept the evidence before me that the tenant failed to dispute either of the 2 Month Notices within the 15 days granted under section 49(8) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 49(9) of the *Act* to have accepted that the tenancy ended on the effective date of both 2 Month Notices, December 31, 2016.

Section 51 of the Act provides in part that:

51 (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

As I have found that the landlord's 2 Month Notice is valid with an effective date of December 31, 2016 I find that the tenant is entitled to recovery of the equivalent of one month's rent or to withhold that amount from the last month's rent.

I accept the landlord's undisputed evidence that the tenant failed to pay the rental amount of \$400.00 on November 1, 2016. I accept the evidence that the tenant failed to pay the rental arrears or dispute the 10 Day Notice within the five days granted under section 46(4) of the *Act*. 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, November 14, 2016. Therefore, I find that the landlord is entitled to an Order of Possession on that date, pursuant to section 55 of the *Act*.

I accept the landlord's evidence that the tenant has failed to pay the rental amount of \$400.00 on December 1, 2016. However, in accordance with section 51(1.1) of the *Act* I find that the tenant was entitled to withhold the amount and the amount is deemed to have been paid.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. 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 \$400.00 under the following terms:

Item	Amount
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Unpaid Rent November	\$400.00
Unpaid Rent December	\$400.00
Tenant's s.51 Compensation	-\$400.00
Total Monetary Order	\$400.00

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: December 28, 2016

Residential Tenancy Branch