



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;

This application was originally heard by way of a Direct Request Proceeding and on November 18, 2016 an interim decision was issued adjourning the application to be reconvened at a participatory hearing.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 9:50 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that on November 24, 2016, he served the tenant with a copy of the Application for Dispute Resolution including the Notice of Hearing and Interim Decision by posting a copy to the door of the rental premises.

Based on the above evidence, I am satisfied that the tenant was deemed served with the Application for Dispute Resolution, Notice of Hearing and Interim Decision pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

Preliminary Issue – Amendment to Landlord's Application

Paragraph 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenant had not yet vacated the rental unit and therefore asked to amend his claim to include outstanding rent for the months of November 2016, December 2016 and January 2017. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the

landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

Issues

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 tenancy began on August 1, 2014 with a monthly rent of \$980.00 payable on the 1st day of each month. The original tenancy agreement was between the landlord and G.N. who is not named in this application. G.N. passed away on August 5, 2016 at which time the tenant who at the time was an occupant in the rental unit was added to the tenancy agreement. The tenant's name was added to the first page of the agreement and the tenant signed the agreement in the box beside his name. The tenant did not sign the last page of the agreement. The landlord continues to retain the \$490.00 security deposit paid at the start of the tenancy by tenant G.N.

The landlord testified that on October 13, 2016 the tenant was served with the 10 day Notice to End Tenancy for unpaid rent or utilities by posting a copy to the door of the rental premises. A witnessed proof of service of this Notice was provided with the application.

The landlord's monetary claim is for outstanding rent in the amount of \$4580.65 comprised as follows:

Month:	Amount
August 2016	680.65
September 2016	980.00
October 2016	980.00
November 2016	980.00
December 2016	980.00
January 2017	980.00
Less \$500 paid November 1, 2016	(500.00)
Less \$500 paid November 9, 2016	(500.00)
Total outstanding rent:	\$4580.65

Analysis

I accept the landlord's testimony and evidence that a tenancy agreement was entered into with the tenant after the original tenant G.N. passed away.

I am satisfied that the tenant was deemed served with the 10 day Notice to End Tenancy on October 16, 2016, three days after its posting, pursuant to sections 88 & 90 of the Act.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the "corrected" effective date of the Notice, October 26, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession.

Section 26 of the Act requires that 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 accept the landlord's uncontested evidence and find that the tenant was obligated to pay monthly rent in the amount of \$980.00 but failed to pay rent that was payable over the period of August 2016 to January 2017. I accept the landlord's claim for outstanding rent of \$4580.65.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$4580.65.

Conclusion

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

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$4580.65. 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: January 05, 2017

Residential Tenancy Branch