



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUPERMEN PROPERTY MANAGEMENT INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR,

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- an order of possession for unpaid rent; and
- a monetary order for unpaid rent.

The landlord's agent K.F. (the "landlord") appeared at the teleconference hearing and gave affirmed testimony. The tenant did not appear at the hearing which lasted 26 minutes. During the hearing the landlord was given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the landlord's Application and Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered.

The landlord testified that the tenant was served with the landlord's Application on November 28, 2016 by handing a copy to the tenant in person. The landlord testified that the tenant was served with the Notice of Hearing on December 2, 2016 by handing a copy to the tenant in person. Taking into account the undisputed testimony of the landlord and in accordance with sections 89 of the *Act*, I find that the tenant has been served with the landlord's Application on November 28, 2016 and the Notice of Hearing on December 2, 2016.

Issue(s) to be Decided

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

Background and Evidence

The undisputed testimony of the landlord established that a month to month the tenancy started on September 1, 2016 pursuant to a written tenancy agreement signed by the tenant on September 1, 2016. Rent in the amount of \$850.00 is due on the first day of each month. The landlord testified that the tenant paid a security deposit in the amount of \$425.00 on August 24, 2016.

The landlord testified that a 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") was served on the tenant in person by leaving a copy with the tenant on November 9, 2016. The landlord testified that an error was made on the 10 Day Notice with respect to the manner of service.

The 10 Day Notice required the tenant to move out by November 19, 2016. The amount of unpaid rent shown on the 10 Day Notice is \$425.00 that was due on November 1, 2016. The landlord testified that the tenant did not pay the rent that was due after receiving the 10 Day Notice and instead continued to accumulate further arrears by not paying the full amount of rent due for December, 2016 and January 2017. After expiration of that 10 day period, the landlord applied for an order of possession.

The amount of unpaid rent set out in the landlord's application is \$425.00. However, at the hearing the landlord sought additional unpaid rent in the amount of \$850.00 for the month of December 2016. The landlord's Worksheet also indicates that the landlord is seeking additional unpaid rent in the amount of \$850.00 for the month of January 2017. The landlord sought to amend her application to include the entire amount of unpaid rent.

The landlord is seeking a monetary order for unpaid rent in the sum of \$2,125.00 and an order of possession for unpaid rent.

The landlord is not seeking to apply the security deposit against the amounts owed by the tenant.

Analysis

Based upon the undisputed evidence of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was served with the dispute resolution hearing package and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful as I find the evidence supports the landlord's claim and is reasonable.

I find that the tenant was required to pay rent in the amount of \$850.00 for the month of November and the amount of \$425.00 remains unpaid. I find that the tenant was required to pay rent in the amount of \$850.00 for each of the months of November and December 2016; and January 2017 and that she did not do so.

In accordance with section 88 of the *Act*, I find that the tenant was served with the 10 Day Notice on November 9, 2016. I also find that the 10 Day Notice complies with section 52 of the *Act* and that it is valid.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within five (5) days granted under section 46(4) of the *Act* and that she did not dispute the 10 Day Notice within that 5 day period.

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 10 Day Notice, November 19, 2016. Therefore, I find the landlord is entitled to an order of possession.

I accept the landlord's request to amend the landlord's application to include the full amount of unpaid rent in the total amount of \$2,125.00. I find that there is no prejudice to the tenant as the tenant knew or ought to have known that she was required to pay the rent when due.

Therefore, I find that the landlord is entitled to a monetary order in the amount of \$2,125.00. The amount awarded is the amount of the landlord's claim for unpaid rent owing from November 1, 2016 to January 1, 2017 calculated as follows:

November 2016 Unpaid Rent	\$ 425.00
December 2016 Unpaid Rent	\$ 850.00
January 2017 Unpaid Rent	\$ 850.00
Total	\$ 2,125.00

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is granted a monetary order in the amount of \$2,125.00 which must be served on the tenant as soon as possible. Should the tenant fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 16, 2017

Residential Tenancy Branch