



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This was the landlord's application for an order of possession for unpaid rent pursuant to section 55, a monetary order for unpaid rent, pursuant to section 67, and authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend the hearing. The individual landlord attended and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As the tenant did not attend the hearing, service of the landlord's application and the notice of hearing were considered. The landlord provided affirmed testimony that he sent these materials and associated evidence on December 20, 2016 by registered mail to the rental unit address. A Canada Post Registered Mail receipt and address slip was submitted in evidence. In accordance with sections 89 and 90 of the Act, the tenant is deemed to have been served with the landlord's materials on December 25, 2016, five days after they were posted.

The landlord amended his application during the hearing to add a claim for outstanding January rent and I accepted the request to amend as per Rule 4.2 of the Rules of Procedure on the basis that the tenant can reasonably anticipate that the amount owing for rent will increase after the date of the application. Accordingly, the landlord seeks a monetary order of \$1,800.00 for unpaid rent for December and January as well as recovery of the \$100.00 filing fee.

Issues to be Decided

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

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

According to the written tenancy agreement in evidence and the landlord's affirmed and undisputed evidence, this tenancy began on September 1, 2016 as a month to month tenancy with rent of \$900.00 payable on the first day of each month. The tenancy agreement indicates that a security deposit of \$450.00 is required but the date due is not set out in the tenancy agreement and there is no confirmation in the written agreement that a deposit was received. At my request the landlord submitted confirmation that the security deposit had been paid after the hearing.

The landlord testified that the tenant failed to pay the rent due on December 1, 2016. He further testified that he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2016 (the "10 Day Notice") on December 3, 2016 by posting it on the door of the rental unit. The landlord provided a Proof of Service document signed by a witness as evidence of this. As the Proof of Service document did not indicate what the tenant was served with or the date of service, the landlord's witness was conferenced into the hearing. The witness gave affirmed testimony that he observed the landlord attach the 10 Day Notice to the door of the rental unit on December 3, 2016. In accordance with sections 88 and 90 of the Act, the tenant is deemed to have been served with the landlord's 10 Day Notice on December 6, 2016, three days after it was attached to his door.

The tenant failed to either dispute the notice or pay the full rent owing within five days of being served. Indeed, the tenant has not paid rent for December or for January. The landlord believes that the tenant remains in the rental unit.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. It is clear that the tenant failed to pay the rent due on December 1, 2016, within five days of being served the 10 Day Notice. The tenant has not made an application to dispute the 10 Day Notice.

In accordance with section 46(5) of the Act, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on December 13, 2016, the effective date on the 10 Day Notice. The tenants and anyone on the premises were required to vacate the premises by that date. As this has not occurred, and as rent has not been paid for January, 2017, I find that the landlord is entitled to a two (2) day order

of possession. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$900.00 for each of December, 2016 and January, 2017. Therefore, I find that the landlord is entitled to \$1,800.00 in arrears for the above period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

The landlord continues to hold the tenant's security deposit. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit of \$450.00 in partial satisfaction of the monetary claim.

I issue a monetary order against the tenant and in favour of the landlords for **\$1,450.00** (the balance of the \$1,900.00 owing).

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**. 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 for the landlord in the following terms, which allows the landlord to obtain a monetary award for unpaid rent and the filing, and to retain the security deposit for this tenancy:

Item	Amount
Rent December and January (\$900.00 x 2)	\$1,800.00
Filing Fee	\$100.00
Less Security Deposit	-\$450.00
Total Monetary Order	\$1,450.00

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*. Pursuant to s. 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*

Dated: January 23, 2017

Residential Tenancy Branch