



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on November 22, 2016 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

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

The Landlord attended the hearing on his own behalf and provided his solemn affirmation. The Tenant did not attend the hearing.

The Landlord testified that the Tenant was served with the Landlord's Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, by registered mail on November 23, 2016. In support, the Landlord provided a copy of a Canada Post registered mail receipt. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Tenant is deemed to have received the Landlord's Application package on November 28, 2016.

The Landlord was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to an order of possession for unpaid rent or utilities?

Background and Evidence

The Landlord submitted into evidence a copy of the written tenancy agreement between the parties. He confirmed the tenancy began on May 1, 2016. Rent in the amount of \$1,600.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$400.00, which the Landlord holds.

The Landlord testified the Tenant did not pay rent when due on October 1, 2016, but that a partial payment of \$1,400.00 was subsequently received, leaving \$200.00 outstanding for that month. In addition, the Tenant did not pay rent when due on November 1, 2016. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 10, 2016 (the "10 Day Notice"). The 10 Day Notice was served on the Tenant by posting a copy to the door of the Tenant's rental unit.

According to the Landlord, no further rent payments have been made by the Tenant. The Landlord confirmed rent in the amount of \$5,000.00 is currently outstanding, and that the Tenant continues to occupy the rental unit.

Analysis

Based on the unchallenged and affirmed oral testimony and the documentary evidence submitted by the Landlord, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section and wishes to dispute it has five days to either pay rent or file an application for dispute resolution. When a tenant does not pay rent or file an application for dispute resolution, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In this case, the Landlord testified, and I find, that the 10 Day Notice was served on the Tenant by attaching a copy to the door of the Tenant's rental unit on November 10, 2016. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received three days later. I find the Tenant is deemed to have received the 10 Day Notice on November 13, 2016.

As noted above, a tenant has five days after receiving a notice to end tenancy for unpaid rent to either pay rent or make an application for dispute resolution. In this case, the Tenant has done neither. Accordingly, the Tenant is conclusively presumed to have accepted the end of the tenancy. As a result, I find the Landlord is entitled to an order of possession, which will be effective one (1) day after service on the Tenant.

In addition, the Landlord testified that rent in the amount of \$5,000.00 remains outstanding. I find the Landlord is entitled to a monetary award in the amount of \$5,000.00 for unpaid rent.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make this Application.

The Landlord has requested that he be permitted to retain the security deposit (\$800.00) in partial satisfaction of the claim, which I allow.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$4,300.00, which has been calculated as follows:

Claim	Amount
October 2016 rent:	\$200.00
November 2016 rent:	\$1,600.00
December 2016 rent:	\$1,600.00
January 2017 rent:	\$1,600.00
Filing fee:	\$100.00
LESS security and pet damage deposits:	(\$800.00)
TOTAL:	\$4,300.00

Conclusion

I grant the Landlord an order of possession, which will be effective one (1) day after service on the Tenant. This Order may be filed in and enforced as an order of the Supreme Court of British Columbia.

I grant the Landlord a monetary order in the amount of \$4,300.00. This Order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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