



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55;
- a Monetary Order for unpaid rent pursuant to section 67;
- an order to keep all or part of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties attended the hearing I confirmed that there were no issues with service. The landlords testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), dated November 2, 2016 was served on the tenant by posting on the rental unit door on that day. The tenant confirmed receipt of the 10 Day Notice. I find that the tenant was served in accordance with section 88 of the *Act*.

The landlords testified that the landlords' application for dispute resolution dated November 30, 2016 was sent to the tenant by registered mail on that date. The landlords provided a Canada Post tracking number as evidence. The tenant denied receipt of the landlords' application by registered mail testifying that while he is aware of the application he has not attended at the post office to pick up the package. Regardless of the tenant's failure to pick up the package at the post office I find that the tenant was deemed served with the landlords' application on December 5, 2016, five days after mailing in accordance with sections 89 and 90 of the *Act*.

At the outset of the hearing, the landlords made an application requesting to amend the monetary amount of the claim sought. The landlords indicated that the corrected total arrears for this tenancy as of the date of the hearing is \$2,675.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlords' Application to increase the landlords' monetary claim from \$2,100.00 to \$2,675.00.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to monetary compensation as claimed?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The parties agreed on the following facts. This month-to-month tenancy began in September, 2016. The current rent is \$1,125.00 payable on the 1st of the month. If the full rent is paid on or before the 1st of the month the tenant is entitled to a discounted monthly rental rate of \$1,100.00. A security deposit of \$550.00 was paid by the tenant at the start of the tenancy. The tenant continues to reside in the rental unit at the time of the hearing.

The landlords testified that at the time the 10 Day Notice was issued the tenancy was in arrears by \$1,125.00, the amount initially sought in the 10 Day Notice. The tenant testified that he made partial payment of \$550.00 on November 11, 2016 and a payment of \$150.00 on November 18, 2016. The landlords testified that as the amount received was not the full amount owing they accepted payment for use and occupancy only and issued the notice of dispute resolution.

The parties testified that no further payment has been made by the tenant and the current amount owing for the tenancy as of January 9, 2016, the date of the hearing, is \$2,675.00.

Analysis

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,125.00. I accept the evidence before me that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenant dispute the 10 Day Notice within that 5 day period. 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 15, 2016. Therefore, I find that the landlords are entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the parties' evidence that the total amount of arrears for this tenancy is \$2,675.00. I issue a monetary award for unpaid rent owing of \$2,675.00 as at January 9, 2016, the date of the hearing, pursuant to section 67 of the *Act*.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenant's \$550.00 security deposit in partial satisfaction of the monetary award issued in the landlords' favour.

As the landlords' application was successful, the landlords are also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlords effective **2 days after service on the tenants**. Should the tenants 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 landlords' favour in the amount of \$2,225.00 under the following terms, which allows the landlords to recover unpaid rent for the months of November, December, and January, and the filing fee for their application less the security deposit:

Item	Amount
Unpaid Rent November	\$425.00
Unpaid Rent December	\$1,125.00
Unpaid Rent January	\$1,125.00
Less Security Deposit	-\$550.00
Filing Fees	\$100.00
Total Monetary Order	\$2,225.00

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: January 9, 2017

Residential Tenancy Branch