



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, 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 and damages pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 16 minutes. The landlords attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord, PA, (the "landlord") provided testimony for both landlords.

The landlord testified that she personally served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), dated December 7, 2016 on the tenant on the same date. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlords' 10 Day Notice on December 7, 2016.

The landlord testified that she employed an agent who personally served the landlords' application for dispute resolution package dated December 14, 2016 on the tenant on December 22, 2016. In accordance with section 89 of the *Act*, I find that the tenant was duly served with the landlords' application on December 22, 2016.

During the hearing the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord testified there is a calculation error in the application and the correct amount of arrears as of the date of the hearing is \$1,410.00. 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 \$1,350.00 to \$1,410.00.

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 landlord provided undisputed testimony regarding the following facts. This month-to-month tenancy began in June, 2016. The current rent is \$950.00 payable on the 1st of the month. No security deposit 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 landlord testified that at the time the 10 Day Notice was issued the tenancy was in arrears by \$950.00, the amount initially sought in the 10 Day Notice. The landlord testified that the tenant made a payment of \$200.00 on December 14, 2016 and a second payment of \$290.00 on December 16, 2016. The landlord testified that she informed the tenant that money was being accepted for use and occupancy only and the landlord was seeking to end the tenancy. The landlord testified that the tenant failed to pay rent for January. The landlord said that the total amount owing for the tenancy as of January 19, 2017, the date of the hearing is \$1,410.00.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenant was obligated to pay the monthly rent in the amount of \$950.00. I accept the landlord's evidence 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 corrected effective date of the 10 Day Notice, December 17, 2016. Therefore, I find that the landlords are entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the landlords' undisputed evidence that the total amount of arrears for this tenancy is \$1,410.00. I issue a monetary award in the landlords' favour for unpaid rent of \$1,410.00 as at January 19, 2017, the date of the hearing, pursuant to section 67 of the *Act*.

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 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 in the landlords' favour in the amount of \$1,510.00 under the following terms, which allows the landlords to recover unpaid rent for the months of December, and January, and the filing fee for their application:

| Item | Amount |
|-----------------------------|-------------------|
| Unpaid Rent December | \$460.00 |
| Unpaid Rent January | \$950.00 |
| Filing Fees | \$100.00 |
| Total Monetary Order | \$1,510.00 |

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 19, 2017

Residential Tenancy Branch