



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* (the "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;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend the hearing which lasted approximately 15 minutes. The landlords were represented at the hearing by their agents who were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlords' agent YC primarily testified (the "landlord").

The landlord testified that the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated December 6, 2016 was served on the tenant by registered mail on that date. The landlord provided a Canada Post tracking number as evidence. I find that the 10 Day Notice was deemed served in accordance with sections 88 and 90 of the *Act* on December 11, 2016, five days after mailing.

The landlord testified that the landlords' application for dispute resolution dated December 23, 2016 was served on the tenant on December 29, 2016 by registered mail. The landlord provided a Canada Post tracking number as evidence. I find that the landlords' application and evidence were deemed served on the tenant in accordance with sections 89 and 90 of the *Act* on January 3, 2017, five days after mailing.

At the outset of the hearing the landlord made an application to amend the monetary amount of the award sought. The landlord testified that the tenant has failed to pay the January rent and the total arrears as at the date of the hearing is \$2,450.00. 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 \$1,225.00 to \$2,450.00.

Issue(s) to be Decided

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

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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 fixed term tenancy began in September, 2016. The current rent is \$1,225.00 payable on the 1st of the month. A security deposit of \$612.50 was paid by the tenant at the start of the tenancy and still held by the landlords. 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 \$1,225.00, the amount initially sought in the 10 Day Notice. The landlord testified that no payment was received from the tenant after serving the 10 Day Notice. The landlord testified that the tenant subsequently failed to pay rent for January. The landlord said that the total amount owing for the tenancy as of January 24, 2017, the date of the hearing is \$2,450.00.

Analysis

The landlords 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 \$1,225.00. I accept the landlords' 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 effective date of the 10 Day Notice, December 21, 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 \$2,450.00. I issue a monetary award in the landlords' favour for unpaid rent of \$2,450.00 as at January 24, 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.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenant's security deposit of \$612.50 in partial satisfaction of the monetary award issued in the landlords' favour.

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 \$1,937.50 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	\$1,225.00
Unpaid Rent January	\$1,225.00

Filing Fees	\$100.00
Less Security Deposit	-\$612.50
Total Monetary Order	\$1,937.50

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 24, 2017

Residential Tenancy Branch