



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DAVID BURR LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNDC MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on November 30, 2016 (the "Application"). This matter first came on for hearing on January 10, 2017. However, the Landlord's agent who attended was not familiar with various aspects of the Application and asked to adjourn the hearing. As the Tenant did not attend, and an adjournment would not prejudice the Tenant, the request was granted and the hearing was reconvened on February 8, 2017. The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or a tenancy agreement;
- an order allowing the Landlord to keep all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlord's agent, C.R., attended the hearing on behalf of the Landlord and provided affirmed testimony. The Tenant did not attend the hearing.

According to C.R., the Landlord's Application package, including the Notice of a Dispute Resolution Hearing and the documentary evidence, was served on the Tenant by registered mail on December 5, 2016. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find that the Landlord's Application package is deemed to have been received by the Tenant on December 10, 2016. Notice of the reconvened hearing was sent directly to the Tenant by the Residential Tenancy Branch.

The Landlord's agent was provided the 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.

Preliminary and Procedural Matters

During the hearing, C.R. confirmed that the Tenant moved out of the rental unit on January 20, 2016, and that an order of possession is no longer required. Accordingly, I have not considered this aspect of the Landlord's Application further 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 a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or a tenancy agreement?
3. Is the Landlord entitled to keep all or part of the security deposit or pet damage deposit?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlord submitted into evidence a copy of the written tenancy agreement between the parties. It confirms the month-to-month tenancy began on August 1, 2016. Rent in the amount of \$1,350.00 per month is due on or before the first calendar day of each month. The Tenant paid a security deposit to the Landlord in the amount of \$675.00, which the Landlord holds.

On behalf of the Landlord, C.R. testified that the Tenant did not pay rent when due on October 1 or November 1, 2016. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 16, 2016 (the "10 Day Notice"). The amount of rent outstanding at that time was \$2,700.00. C.R. confirmed the 10 Day Notice was served on the Tenant by posting a copy to the door of the Tenant's rental unit on November 16, 2016. A copy of the 10 Day Notice was submitted with the Landlord's documentary evidence.

Further, C.R. testified that rent was also not paid when due on December 1, 2016, and January 1, 2017. The Landlord has not received any partial payments. Currently, rent in the amount of \$5,400.00 remains outstanding.

On behalf of the Landlord, C.R. also confirmed the Landlord's request to recover the cost of the filing fee, and to apply the security deposit held to any monetary award granted.

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, 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 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's agent testified, and I find, that the Tenant did not pay rent when due on October 1 and November 1, 2016. Accordingly, the Landlord served the Tenant with the notice to end tenancy by posting a copy to the door of the Tenant's rental unit on November 16, 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 that the 10 Day Notice is deemed to have been received by the Tenant on November 19, 2016.

The Landlord testified that the Tenant also did not pay rent when due on December 1, 2016, and January 1, 2017. He confirmed that rent in the amount of \$5,400.00 remains outstanding. The Tenant did not attend the hearing to dispute this amount. Accordingly, I find the Landlord is entitled to a monetary award of \$5,400.00 for unpaid rent.

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

On behalf of the Landlord, C.R. confirmed the Landlord's request to apply the security deposit in partial satisfaction of my monetary order, which I allow, pursuant to section 72 of the *Act*.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$4,825.00, which has been calculated as follows:

Item	Amount awarded
October 2016 rent:	\$1,350.00
November 2016 rent:	\$1,350.00
December 2016 rent:	\$1,350.00
January 2017 rent:	\$1,350.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$675.00)
TOTAL:	\$4,825.00

Conclusion

The Landlord is granted a monetary order in the amount of \$4,825.00. 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: February 8, 2017

Residential Tenancy Branch