



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

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; and
- a Monetary Order for unpaid rent and damages pursuant to section 67.

The tenant did not attend the hearing which lasted approximately 20 minutes. The landlord attended and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord, MC confirmed that she spoke for all of the named landlords (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 30, 2016 was served on the tenant by posting in a conspicuous place at the rental address on that date. I find that the 10 Day Notice was deemed served in accordance with sections 88 and 90 of the *Act* on January 1, 2017, three days after posting.

The landlord testified that the landlords' application for dispute resolution dated January 17, 2017 was served on the tenant by registered mail on January 20, 2017. 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 25, 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 there has been a calculation error as well as further rent arrears and the corrected amount owing for the tenancy as of the date of the hearing is \$4,400.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlord's Application to decrease the landlord's monetary claim from \$4,500.00 to \$4,400.00.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This tenancy began in December, 2016. The monthly rent is \$1,800.00 payable on the first of the month. The tenant did not pay a security deposit at the start of the tenancy despite the landlord requesting a deposit be paid. The tenant continues to reside in the rental unit at the time of the hearing.

The landlord testified that the tenant has failed to pay the security deposit and the December rent and at the time the 10 Day Notice was issued the tenancy was in arrears by \$2,700.00. The landlord testified that the tenant made a payment of \$1,000.00 on or about January 16, 2017 which was accepted for use and occupancy only. The landlord testified that the tenant subsequently failed to pay rent for February. The landlord said that the total amount owing for the tenancy as of February 9, 2017, the date of the hearing is \$4,400.00.

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 \$1,800.00. 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, January 11, 2017. Therefore, I find that the landlords are entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$4,400.00. I issue a monetary award in the landlords' favour for unpaid rent of \$4,400.00 as at February 9, 2017, the date of the hearing, pursuant to section 67 of the *Act*.

Conclusion

I grant an Order of Possession to the landlord 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 landlord's favour in the amount of \$4,400.00 under the following terms, which allows the landlords to recover unpaid rent for this tenancy:

Item	Amount
Unpaid Rent December	\$800.00
Unpaid Rent January	\$1,800.00
Unpaid Rent February	\$1,800.00
Total Monetary Order	\$4,400.00

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: February 9, 2017

Residential Tenancy Branch