



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 landlord's 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, assisted by his partner who acted as agent and interpreter, and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated October 18, 2016 was personally served on the tenant on that date. I find that the 10 Day Notice was duly served in accordance with sections 88 of the *Act* on that date.

The landlord testified that the landlord's application for dispute resolution dated January 24, 2017 was personally served on the tenant on January 27, 2017. I find that the landlord's application and evidence were served on the tenant in accordance with sections 89 of the *Act* on January 27, 2017.

At the outset of the hearing the landlord made an application to amend the monetary amount of the award sought. The landlord testified that since filing the landlord's application the tenant has failed to pay February rent and the actual amount owing as of the date of the hearing is \$15,400.00. 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 increase the landlord's monetary claim from \$12,200.00 to \$15,400.00.

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 sometime in 2015. The tenant was originally a resident of another property owned by the landlord but when the landlord sold that property, the landlord and tenant agreed that the tenant could move into the current address and a new tenancy started. There is no written tenancy agreement. The current rent is \$1,600.00 payable on the 1st of the month. No security deposit was collected from the tenant at the start of this tenancy. 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 rent since February, 2016. The landlord testified that at the time the 10 Day Notice was issued the tenancy was in arrears by \$9,000.00. 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 any rent up to the date of the hearing. The landlord said that the total amount owing for the tenancy as of February 20, 2017, the date of the hearing is \$15,400.00.

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 \$1,600.00. 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, October 28, 2016. Therefore, I find that the landlord is 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 \$15,400.00. I issue a monetary award in the landlord's favour for unpaid rent of \$15,400.00 as at February 20, 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 \$15,400.00 against the tenant. 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 20, 2017

Residential Tenancy Branch