



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, dated January 10, 2017 (the "Application"). 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; and
- an order granting recovery of the filing fee.

The parties attended the hearing and provided affirmed testimony.

The Landlord testified the Landlord's Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Tenant, in person, on or about January 12, 2017. I find the Landlord's Application package was duly served on the Tenant on or about January 12, 2017.

Both parties attended the hearing and were prepared to proceed. No issues were raised with respect to service or receipt of the Landlord's Application package. The parties were provided with 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.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlord testified the month-to-month tenancy began on January 15, 2016. Rent in the amount of \$800.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$400.00, which the Landlord holds.

The Landlord testified the Tenant has not paid rent when due throughout the tenancy. According to the Landlord, the Tenant has made repeated promises to pay rent arrears but has not done so. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 18, 2016 (the "10 Day Notice"), which was served on the Tenant by posting a copy to the door of the Tenant's rental unit.

According to the Landlord, the Tenant made additional promises to pay rent arrears but did not do so. He testified the Tenant currently owes \$7,100.00 in rent arrears. In support, the Landlord provided a series of receipts and provided oral testimony, which may be summarized as follows:

Month	Rent received	Rent outstanding
January 2016	\$400.00	\$0
February 2016	\$0	\$800.00
March 2016	\$800.00	\$0
April 2016	\$0	\$800.00
May 2016	\$0	\$800.00
June 2016	\$800.00	\$0
July 2016	\$0	\$800.00
August 2016	\$0	\$800.00
September 2016	\$560.00	\$240.00
October 2016	\$640.00	\$160.00
November 2016	\$500.00	\$300.00
December 2016	\$0	\$800.00
January 2017	\$0	\$800.00
February 2017	\$0	\$800.00
TOTAL:	\$3,700.00	\$7,100.00

The Tenant did not dispute the amount claimed by the Landlord. However, she testified she is not working enough and cannot find somewhere to move with her family.

Analysis

Based on the affirmed oral 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 and wishes to dispute it 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 testified, and I find, that the Tenant did not pay rent when due on numerous occasions throughout the tenancy. Accordingly, the Landlord served the Tenant with the 10 Day Notice by posting a copy to the door of the Tenant's rental unit on August 18, 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 August 21, 2016.

As the Tenant did not pay rent or dispute the 10 Day Notice within five days after receiving it, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

Further, the Landlord's undisputed evidence was that rent in the amount of \$7,100.00 is currently outstanding. Accordingly, I find the Landlord is entitled to a monetary award of \$7,100.00 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. Pursuant to section 72 of the *Act*, I deduct from the total monetary award the amount of the security deposit retained by the Landlord.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$6,800.00, which has been calculated as follows:

Claim	Amount
Outstanding rent:	\$7,100.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$400.00)
TOTAL:	\$6,800.000

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$6,800.00. 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 6, 2017

Residential Tenancy Branch