



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

A hearing was convened to deal with applications by both the tenant and the landlord based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 2, 2017.

The landlord applied for an order of possession for unpaid rent and a monetary order for unpaid rent.

The tenant applied for an order cancelling the 10 Day Notice, more time to make the application to dispute the 10 Day Notice, a monetary order for compensation or damage under the Act, regulation, or tenancy agreement, authorization to reduce rent for repairs or services not provided, and other unspecified relief.

The tenant did not attend the hearing. The individual landlord attended with his son in the event translation was necessary (although it was not), and was given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

As the tenant did not attend the hearing, service of the landlord's application and the notice of hearing were considered. The landlord provided affirmed testimony that he served the tenant personally with these materials and supporting evidence on January 16, 2017. I am satisfied that the tenant has been served with the landlord's notice of hearing.

The tenant's own application was scheduled for the same time. The landlord testified that he had not received any materials from the tenant. As the tenant did not serve the landlord and did not attend, I dismissed the tenant's application without leave to reapply.

The landlord amended his application during the hearing to add a claim for outstanding February rent and I accepted the amendment. Rule 4.2 of the Rules of Procedure allows for amendments at the time of hearing where the change can be reasonably anticipated. Here, the tenant can reasonably anticipate that the amount owing for rent will increase after the date of the application. Accordingly, the landlord now seeks a monetary order of \$2,000.00.

Issues 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

According to the written tenancy agreement in evidence and the landlord's affirmed and undisputed evidence, this tenancy began on November 15, 2016 as a month to month tenancy with rent of \$1,050.00 payable on the first day of each month. Rent was reduced to \$1,000.00 as laundry stopped being made available to the tenant. A security deposit of \$500.00 was paid and the landlord continues to hold that amount.

No pet deposit was paid and the tenancy agreement prohibits pets. The landlord testified that the tenant now has two dogs that the landlord does not like.

The landlord testified that the tenant paid the rent owing for November and December, 2016, but failed to pay the rent due on January 1, 2017. He further testified that he personally served the 10 Day Notice on January 2, 2017. A Proof of Service document signed by a witness was included in the landlord's evidence. The landlord also said that the tenant has not paid February rent but remains in the rental unit.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant's application and supporting materials were not served on the landlord, and the landlord has therefore not had opportunity to respond to them. An applicant has the burden to establish his claims on a balance of probabilities. In the tenant's absence and

in light of the fact that he has not served the landlord, the tenant's claims cannot be made out.

Based on the landlord's undisputed testimony and the Proof of Service document in evidence, I find that the tenant was served with the 10 Day Notice on January 2, 2017. The tenant's application to dispute the 10 Day Notice was is dated January 9, 2017.

Section 46(5) of the Act provides that if a tenant does not apply to dispute a 10 Day Notice within five days of receipt, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must vacate the rental unit by that date.

In accordance with section 46(5) of the Act, the failure of the tenant pay the rent owing or file an application to dispute the 10 Day Notice within five days, or attend at this hearing, led to the end of this tenancy on January 13, 2017, the effective date on the 10 Day Notice. The tenants and anyone on the premises were required to vacate the premises by that date. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the Act. I find that the landlord's 10 Day Notice complies with section 52 of the Act.

Sections 7(1) and 67 of the Act establish that a tenant who does not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. The landlord provided undisputed evidence that the tenant failed to pay rent of \$1,000.00 for January and February of 2017. Therefore, I find that the landlord is entitled to \$2,000.00 in rental arrears for the above period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

The landlord continues to hold the tenant's security deposit of \$500.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit of \$500.00 in partial satisfaction of the monetary claim.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this order, it may be filed and enforced as an order of the Supreme Court of British Columbia.

I issue a monetary order for the landlord in the total amount of **\$1,600.00** calculated as follows:

Item	Amount
Rent January and February	\$2,000.00
Filing Fee	\$100.00
Less Security Deposit	-\$500.00
Total Monetary Order	\$1,600.00

The tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The tenant's application is dismissed without leave to reapply.

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*. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 3, 2017

Residential Tenancy Branch