



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX CHECK REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR MNR FF

Introduction

These proceedings were initiated when the Landlord submitted an application for relief pursuant to the Direct Request Proceeding process, received at the Residential Tenancy Branch on February 24, 2017. However, in a decision dated February 28, 2017, an adjudicator ordered that the matter be reconvened to a participatory hearing, conducted by an arbitrator. The hearing occurred on today's date. 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 Landlord was represented at the hearing by K.I., an agent, who provided affirmed testimony. The Tenant did not attend the hearing.

On behalf of the Landlord, K.I. testified that the Tenant was served with the Notice of a Dispute Resolution Hearing and documentary evidence by registered mail on March 2, 2017. In support, the Landlord submitted a Canada Post registered mail receipt bearing the same date. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Tenant is deemed to have received the Notice of a Dispute Resolution Hearing and supporting evidence on March 7, 2017.

The Landlord was given an 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 submitted into evidence a copy of the written tenancy agreement between the parties. It confirmed the tenancy began on December 5, 2017. Rent in the amount of \$725.00 is due on or before the first calendar day of each month. The Tenant paid a security deposit of \$362.50, which the Landlord has retained pending the outcome of this hearing. The Landlord would like to apply the security deposit to any monetary award granted.

On behalf of the Landlord, K.I. testified the Tenant did not pay rent when due on February 1, 2017. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 6, 2017 (the "10 Day Notice"). The 10 Day Notice was served on the Tenant by regular mail on the same date.

In addition, K.I. advised that rent was not received when due on March 1, 2017. No partial rent payments have been made by the Tenant since being served with the 10 Day Notice. Currently, rent in the amount of \$1,450.00 remains outstanding.

Analysis

Based on the unchallenged and affirmed oral testimony and the documentary evidence submitted by the Landlord, 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 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 10 Day Notice was sent to the Tenant by regular post on February 6, 2017. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Tenant is deemed to have received the 10 Day Notice on February 11, 2017.

As noted above, a tenant has five days after receiving a notice to end tenancy for unpaid rent to either pay rent or make an application for dispute resolution. In this case, the evidence before me indicates the Tenant has done neither. Accordingly, the Tenant is conclusively presumed to have accepted the end of the tenancy. As a result, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

The Landlord testified that rent in the amount of \$1,450.00 remains outstanding. I find the Landlord is entitled to a monetary award in this amount for unpaid rent for February and March 2017.

Having been successful, I find the Landlord is also entitled to recover the \$100.00 filing fee paid to make this Application. Further, the Landlord has requested that he be permitted to retain the security deposit (\$362.50) in partial satisfaction of the claim, which I allow.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$1,187.50 which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$1,450.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$362.50)
TOTAL:	\$1,187.50

Conclusion

I grant the Landlord 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.

I grant the Landlord a monetary order in the amount of \$1,187.50. 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: March 30, 2017

Residential Tenancy Branch