



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, received at the Residential Tenancy Branch on February 7, 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 Landlord attended the hearing on his own behalf, as did the Tenant. Both parties provided affirmed testimony.

The Landlord testified his Application package, including the Notice of a Dispute Resolution Hearing and the documentary evidence, was served on the Tenant in person on February 8 or 9, 2017. He testified that his wife and a police officer were in attendance when it was served. I find that the Landlord's Application package was served on the Tenant on February 9, 2017.

In addition, photographic evidence was submitted to the Residential Tenancy Branch on February 22, 2017. This evidence was not related to the matters to be considered in the Application and have not been considered further in this Decision. The Tenant did not submit any documentary evidence in response to the Landlord's Application.

Both parties were in attendance and were prepared to proceed. No issues were raised with respect to service or receipt of the Landlord's evidence. The parties were provided 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.

Preliminary and Procedural Matters

During the hearing, the Tenant posed a number of questions relating to reasons hearings are conducted by telephone conference, policies and procedures, and banking procedures. The Tenant was advised that the hearing is not the correct forum for these questions and that information officers are available during normal business hours to respond to any questions she may have. It was also recommended that the Tenant look at the *Residential Tenancy Act*, the *Residential Tenancy Regulations*, the Rules of Procedure, and the Policy Guidelines for further information.

In addition, the Tenant was reminded on several occasions during the hearing that the issue before me concerned the payment of rent. The Tenant was given a full opportunity to present her testimony with respect to the payment of rent, and her evidence has been summarized below.

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 tenancy began on or about April 1, 2016, and that rent in the amount of \$1,300.00 per month is due on the first day of each month. The Tenant did not pay a security deposit.

The Landlord 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 January 2, 2017 (the "10 Day Notice"), a copy of which was submitted with the Landlord's documentary evidence. According to the Landlord, the 10 Day Notice was served on the Tenant in person with a witness present on January 2, 2017.

The Landlord confirmed he subsequently received a cheque from the Tenant, dated February 8, 2017, in the amount of \$1,300.00. However, the cheque could not be processed and was returned by the bank. The Landlord provided a copy of the cheque and a bank statement in support.

In addition, the Landlord testified that rent was also not paid when due on March 1, 2017, and that rent in the amount of \$2,600.00 remains outstanding. The Landlord also sought to recover the \$100.00 filing fee paid to make the Application.

In reply, the Tenant testified she has paid rent but that it was not accepted by the Landlord. She testified that the reason the Landlord is proceeding with the dispute resolution process is because he is unhappy that she started paying rent once per month by cheque rather than in weekly installments. The Tenant testified that the Tenant's weekly payments were a benefit to the Landlord.

In addition, the Tenant testified that she has received no information from her bank to confirm that the cheque dated February 8, 2017, was not processed.

Analysis

Based on the affirmed 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 under this section 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 February 1, 2017. Accordingly, the Landlord served the Tenant with the 10 Day Notice in person on February 2, 2017. Having received the 10 Day Notice on that date, the Tenant had until February 7, 2017 to pay rent or dispute the 10 Day Notice by filing an application for dispute resolution. Although the Tenant provided the Landlord with a cheque dated February 8, 2017, I find it could not be processed and that rent remains

unpaid. I also note the cheque was dated the day *after* rent was to have been paid under section 46(4) of the *Act*.

In addition, the Landlord testified that rent was not paid when due on March 1, 2017. I find that rent has not been paid for February and March 2017. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

In addition, I find that rent in the amount of \$2,600.00 remains outstanding. Accordingly, the Landlord is entitled to a monetary award of \$2,600.00 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 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$2,700.00, which has been calculated as follows:

Item	Amount
February 2017 rent:	\$1,300.00
March 2017 rent:	\$1,300.00
Filing fee:	\$100.00
TOTAL:	\$2,700.00

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after it is served 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 \$2,700.00. 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: March 8, 2017

Residential Tenancy Branch

