



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This matter originally proceeded by way of direct request proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution (the “Application”) by the landlord for an order of possession for unpaid rent or utilities, and a monetary order for unpaid rent or utilities. On February 7, 2017 an adjudicator adjourned the matter to a participatory hearing which was held on Thursday, March 9, 2017 at 9:30 a.m. Pacific Time. The Interim Decision written by the adjudicator dated February 7, 2017 should be read in conjunction with this decision.

The son/agent for the landlord (the “agent”) attended the teleconference hearing as scheduled and provided affirmed testimony. The agent presented documentary evidence. I have described the evidence relevant to the matters before me below.

As the tenant did not attend the hearing, service of the original Notice of Direct Request Proceeding, the Notice of an Adjourned Hearing, the Application for Dispute Resolution (the “Application”) and documentary evidence were considered. The agent provided affirmed testimony that the Notice of Direct Request Proceeding and documentary evidence were served on the tenant to the rental unit address by registered mail on February 3, 2017 and was signed for and accepted by the tenant on February 16, 2017 according to the online registered mail tracking website. The registered mail tracking number has been included on the cover page of this decision for ease of reference.

Regarding the Notice of Adjourned Hearing and Interim Decision the agent affirmed that those were served on the tenant by posting to the tenant’s door on February 16, 2017. Documents posted to the door are deemed served three days after mailing pursuant to section 90 of the *Act*. Pursuant to section 90 of the *Act*, I find the tenant is deemed served as of February 19, 2017 with the Interim Decision and the Notice of Adjourned Hearing. The tenant did not attend the hearing so the hearing continued without the tenant’s participation as the tenant is deemed served.

Preliminary and Procedural Matter

The agent testified that in addition to the rent owed as claimed in the original Application, the landlord has also suffered a loss of rent of \$850.00 for loss of February 2017 rent, and a loss of March 2017 rent of \$850.00 as the rental unit continues to be occupied. As a result, the agent requested to amend the Application to include loss of February and March 2017 rent. I find this request to amend the Application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement as the rental unit continues to be occupied. Therefore, I amend the landlord's Application pursuant to section 64(3) of the *Act* to \$1,940.00 which includes \$240.00 for the unpaid portion of January 2017 rent, \$850.00 for loss of February 2017 rent, and \$850.00 for loss of March 2017 rent. The agent also verbally requested to recover the cost of the filing fee if the landlord was so entitled under the *Act* and to retain the tenant's security deposit to offset the monetary amount if the landlord is so entitled under the *Act*.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. A month to month tenancy began on July 27, 2013. The rental unit continues to be occupied. Monthly rent of \$850.00 is due on the first day of each month. The tenant paid a security deposit of \$425.00 at the start of the tenancy which the landlord continues to hold.

The agents testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 2, 2017 (the "10 Day Notice") was posted to the tenant's door on January 2, 2017 at noon and that the tenant did not dispute the 10 Day Notice or pay any of the rent owing as indicated on the 10 Day Notice. The effective vacancy date listed on the 10 Day Notice was January 12, 2017 and indicates that \$850.00 in rent arrears was owed as of January 1, 2017. The effective vacancy date automatically corrects under section 53 of the *Act* to January 15, 2017 as the 10 Day Notice was posted to the door on January 2, 2017 and pursuant to section 90 of the *Act* which states that documents posted to the door are deemed served three days later. The tenant paid a portion of January 2017 rent but still owes \$240.00 in unpaid rent for January 2017 and has not paid February and March 2017 rent and the rental unit remains occupied and no keys have been returned to the landlord.

The landlord is seeking a two-day order of possession and a monetary order as a result.

Analysis

Based on the undisputed documentary evidence of the landlord and undisputed testimony provided by the agent, and on the balance of probabilities, I find the following.

Firstly, as the tenant was sufficiently served under the *Act* and did not attend the hearing, I find the landlords' Application to be unopposed by the tenant.

Order of Possession - I accept the agent's undisputed testimony that the tenant failed to pay the full amount of rent owed or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice, and that the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the corrected effective vacancy date on the 10 Day Notice, October January 15, 2017. Therefore, pursuant to section 55 of the *Act* I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

Monetary order - I accept the agent's undisputed testimony that the tenant owes a total of \$1,940.00 in unpaid rent and loss of rent as claimed. I note that the testimony of the agent was consistent throughout the hearing.

As the landlord's application had merit, I grant the landlord the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*.

Given the above, I find the landlord has established a total monetary claim of **\$2,040.00** comprised of unpaid rent, loss of rent, and the recovery of the cost of the filing fee. As the landlord continues to hold the tenant's security deposit of \$425.00 which has accrued no interest to date, and pursuant to section 72 of the *Act*, **I authorize the** landlord to retain the tenant's full security deposit of \$425.00 in partial satisfaction of the landlord's monetary claim. Pursuant to section 67 of the *Act*, I grant the landlord a monetary order for the balance owing by the tenant to the landlord in the amount of \$1,615.00.

Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) days after service on the tenant, which must be served on the tenant and may be enforced in the

Supreme Court of British Columbia. I find the tenancy ended on January 15, 2017 and that the tenant has been over-holding the rental unit since that date.

The landlord has established a total monetary claim of \$2,040.00 as described above. The landlord has been authorized to retain the tenant's full security deposit of \$425.00 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order for the balance owing by the tenant to the landlord in the amount of \$1,615.00.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 10, 2017

Residential Tenancy Branch