



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent;
- a monetary order to keep all or part of the security deposit;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and
- recovery of the filing fee paid for this application from the tenant.

The landlord appeared at the teleconference hearing and gave affirmed testimony. The tenants did not appear at the hearing which lasted 62 minutes. During the hearing the landlord was given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the landlord's Application and Notice of a Dispute Resolution Hearing (the "Notice of Hearing") were considered.

The landlord testified that he served two copies of the landlord's Application and Notice of Hearing personally by leaving both copies with the tenant J.F. on February 24, 2017.

Analysis – Service of Landlord's Application

Rule 3.1 of the *Residential Tenancy Branch Rules of Procedure* establishes that the Applicant must, within 3 days of the hearing package being made available by the *Residential Tenancy Branch*, serve the Respondent with various documents set out in that section which include the Application and Notice of Hearing (the "Hearing Package").

Service of an application for a monetary order is governed by Section 89(1) of the *Act*. Section 89(1) of the *Act* requires the application to be served on a tenant by either leaving a copy with the person; by sending a copy by registered mail or by such other method ordered by an Arbitrator. This section does not allow the application to be left with an adult who resides with the tenant.

Service of an application for an order of possession is governed by Section 89(2) of the *Act*. Section 89(2) of the *Act* does allow for service by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant. Section 89(2) of the *Act* also permits service of the application by leaving a copy with the tenant; by sending a copy by registered mail; by attaching a copy to a door or other conspicuous place at the address where the tenant resides; or by such other method ordered by an Arbitrator.

Rule 3.5 of the *Residential Tenancy Branch Rules of Procedure* establishes that the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that **each** respondent was served with the hearing package and all evidence as required by the *Act* and these *Rules of Procedure*.

With respect to the landlord's Application for a monetary order, I am satisfied that tenant J.F. was duly served on February 24, 2017 in accordance with section 89(1) of the *Act*. However, I am not satisfied that tenant R.S. was served in accordance with section 89(1) of the *Act* as this section does not allow for a hearing package to be left with an adult who resides with the tenant. Therefore, I dismiss the landlord's claim for a monetary order against tenant R.S. due to insufficient service of the hearing package on this tenant.

With respect to the landlord's Application for an order of possession, I am satisfied that service on tenant J.F. and tenant R.S. was in accordance with section 89(2) of the *Act*. The landlord personally served tenant J.F. with two copies of the hearing package by leaving both copies with this tenant who is an adult. As section 89(2) of the *Act* permits service on tenant R.S. by leaving a copy with an adult who apparently resides with the tenant, I find that tenant R.S. has been sufficiently served. Therefore, I find that both tenants were duly served with the landlord's hearing package pertaining to the landlord's claim for an order of possession on February 24, 2017.

Preliminary and Procedural Matters

As the landlord was only seeking an amount for unpaid rent, it was not necessary to consider the landlord's claim for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. Therefore I dismiss this claim.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a monetary order for unpaid rent?
- Is the landlord entitled to a monetary order to keep all or part of the security deposit?
- Is the landlord entitled to recovery of the filing fee paid for this application from the tenant?

Background and Evidence

The landlord's evidence established that the tenants signed a tenancy agreement on June 15, 2015. Pursuant to the tenancy agreement, the tenants entered into a one year fixed term tenancy starting July 17, 2015 and ending on July 31, 2016, with an option to continue the tenancy on a month to month basis. Rent in the amount of \$1,000.00 is due on the 5th day of each month. The landlord received a security deposit in the amount of \$250.00 on July 22, 2015. The landlord testified that the tenants are responsible for payment of 2/7ths of the utility bills.

The landlord testified that the tenants only paid rent in the amount of \$500.00 for the month of January 2017. The landlord testified that the tenants paid rent in the amount of \$1,000 for the month of February 2017. The landlord testified that the tenants did not pay the rent arrears owing for the month of January 2017.

The landlord also testified that the tenants did not pay their share of the utilities since they moved into the rental unit. The landlord testified that the tenants owe the landlord \$858.36 for their share of the utility bills.

The landlord testified that he served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") in person by leaving a copy with the tenant R.S on February 8, 2017. The 10 Day Notice shows the \$500.00 owing for unpaid rent and the amount of \$858.36 for unpaid utilities. The effective date set out in the 10 Day Notice is February 7, 2017. The landlord testified that the tenants did not pay the rent arrears or the outstanding amount owing for utilities. The landlord testified that when rent came

due for the month of March 2017, the tenants only paid rent in the amount of \$500.00. The landlord included the unpaid rent for the month of March 2017 in his Application.

The landlord is seeking a monetary order in the amount of \$1,000 for the unpaid rent owing for each of the months of January 2017 and March 2017.

The landlord is also seeking a monetary order in the amount of \$858.36 for the outstanding utilities plus an additional \$200.00 for what the landlord estimates will be the tenants' share of the utilities for the month of March 2017.

The landlord testified that he sent a copy of the utility bills to the tenants each month asking for payment, however, the landlord did not send the tenants a demand letter giving the tenants 30 days to pay the outstanding utilities prior to issuing the 10 Day Notice.

The landlord is requesting to apply the tenants' security deposit in the amount of \$250.00 against the amounts owed by the tenants.

The landlord is also seeking to recover the \$100.00 filing fee for this Application from the tenants.

Analysis

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

MONETARY ORDER

As tenant J.F. was served with the Application and Notice of Hearing for a monetary order and did not attend the hearing, I consider this matter to be unopposed by the tenant. However, I find that the landlord's application for a monetary order is partially successful.

I find that the tenants were required to pay the monthly rent in the amount of \$1,000.00 due on the 5th day of each month. I find that the tenants did not pay rent in the amount of \$500.00 for each of the months of January 2017 and March 2017. Therefore, I find that the landlord is entitled to a monetary order in the amount of \$1,000.00 for unpaid rent.

Section 46(6) of the *Act* requires the landlord to have provided a written demand to the tenants for payment of the unpaid utilities prior to issuing a 10 Day Notice. Pursuant to section 46(6), if the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment, the landlord may treat the unpaid utility charges as unpaid rent and give notice to end the tenancy.

I find that the landlord did not comply with the requirements of section 46(6) of the *Act* as no written demand for payment of the utility charges was given to the tenants. Therefore, I find that the landlord is not entitled to payment from the tenants for the utility charges.

I allow the landlord's request to apply the tenants' security deposit in the amount of \$250.00 against the amounts owed by tenant J.F.

ORDER OF POSSESSION

As both tenants were served with the Application and Notice of Hearing for an order of possession and did not attend the hearing, I consider this matter to be unopposed by the tenants. As a result, I find the landlord's application for an order of possession to be fully successful as I find the evidence supports the landlords' claim and is reasonable.

In accordance with sections 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on February 7, 2017 as a copy was left with tenant R.S.

I accept the evidence before me that the tenants have failed to pay the rent owed in full within five (5) days granted under section 46(4) of the *Act* and that they did not dispute the 10 Day Notice within that 5 day period.

Section 46(1) of the *Act* stipulates that a 10 Day Notice is effective 10 days after the date that the tenant receives the Notice. As the tenants received this Notice on February 7, 2017, I find that the earliest effective date of the 10 Day Notice is February 17, 2017.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the 10 Day Notice required the tenants to vacate the rental unit on February 17, 2017, and not February 7, 2017.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, February 17, 2017. Therefore, I find that the landlord is entitled to an order of possession.

FILING FEE

As the landlord's application is substantially successful I also find that the landlord is entitled to recover the \$100 filing fee from tenant J.F.

Based upon the foregoing, the landlord is entitled to a monetary order in the amount of \$850.00 as follows:

Unpaid Rent for January 2017	\$ 500.00
Unpaid Rent for March 2017	\$ 500.00
Filing Fee	\$ 100.00
Subtotal	\$1,100.00
Less Security Deposit	\$ 250.00
Total Monetary Order	\$ 850.00

Conclusion

The landlord is granted a monetary order against tenant J.F. in the amount of \$850.00 for unpaid rent and the filing fee, less the security deposit. This monetary order must be served on the tenant as soon as possible. Should the tenant fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 23, 2017

Residential Tenancy Branch

