



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: OPR MNR MNDC MNSD FF
Tenant: CNC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application is dated March 13, 2017 (the “Landlord’s Application”). The Landlord applied for the following relief pursuant to the *Act*:

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss;
- an order permitting the Landlord to retain the security deposit and/or pet damage deposit in partial satisfaction of the claim; and
- an order granting recovery of the filing fee.

The Tenant’s Application was received at the Residential Tenancy Branch on March 8, 2017 (the “Tenant’s Application”). The Tenant applied for an order cancelling a 1 Month Notice to End Tenancy for Cause, dated February 27, 2017 (the “1 Month Notice”), pursuant to the *Act*.

The Landlord was represented at the hearing by S.D. The Tenant attended the hearing on her own behalf and was assisted by S.L., an advocate. All parties giving oral testimony provided a solemn affirmation.

On behalf of the Landlord, D.S. testified the Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Tenant by registered mail on March 15, 2017. A Canada Post receipt was submitted in support. 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 Landlord’s Application package on March 20, 2017.

The Tenant testified that her Application package, including the Notice of Dispute Resolution Hearing and documentary evidence, was served on the Landlord by hand-delivering it to the

Landlord on or about March 8, 2017. The Landlord acknowledged receipt. I find the Tenant's Application package was received by the Landlord on March 8, 2017.

Neither party raised any issue with respect to service or receipt of the above documents. The parties were provided the opportunity to present their 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 a monetary order for money owed or compensation for damage or loss?
4. Is the Landlord entitled to an order permitting the Landlord to retain the security deposit and/or pet damage deposit in partial satisfaction of the claim?
5. Is the Landlord entitled to an order granting recovery of the filing fee?
6. Is the Tenant entitled to an order cancelling the 1 Month Notice?

Background and Evidence

The Landlord's Claim

The Landlord submitted into evidence a copy of the written tenancy agreement between the parties. It confirms the month-to-month tenancy began on November 30, 2016. Rent in the amount of \$650.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$325.00, which the Landlord holds.

On behalf of the Landlord, D.S. testified that the Tenant did not pay rent when due on March 1, 2017, but did make a partial payment of \$275.00. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 2, 2017 (the "10 Day Notice"). According to the Landlord, the 10 Day Notice was served on the Tenant by posting a copy to the door of the Tenant's rental unit on March 2, 2017. In support, the Landlord submitted a Proof of Service form confirming that service of the 10 Day Notice in this manner was witnessed. In addition, D.S. confirmed the Tenant paid the Landlord \$650.00 on April 4, 2017. D.S. testified that rent in the amount of \$375.00 remains outstanding, which the Tenant acknowledged.

On behalf of the Landlord, D.S. also confirmed that the lost rent claim for May and June 2017 was out of an abundance of caution as the Landlord did not know when the hearing would take place.

Finally, the Landlord sought to recover the \$100.00 filing fee paid to make the Landlord's Application, and asked me to apply the security deposit held to any monetary order I make.

The Tenant's Claim

For the reasons outlined below, it was not necessary for me to consider the Tenant's Application.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

The Landlord's Claim

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 after receiving it to either pay rent or file an application for dispute resolution. Failure to do so results in the conclusive presumption the tenant has accepted the end of the tenancy.

The Landlord testified the Tenant was served with the 10 Day Notice by posting a copy to the door of the Tenant's rental unit on March 2, 2017. A signed Proof of Service form was provided in support. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received three days later. I find the Tenant is deemed to have received the 10 Day Notice on March 5, 2017.

The Tenant acknowledged that rent in the amount of \$375.00 remains outstanding. She did not dispute the 10 Day Notice by filing an Application for dispute resolution with respect to that notice. Accordingly, I find the Tenant accepted the end of the tenancy. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

Further, in light of the Tenant's acknowledgement that rent in the amount of \$375.00 remains outstanding, I find the Landlord is entitled to a monetary award of \$375.00.

Having been successful, the Landlord is entitled to recover the \$100.00 filing fee paid to make the Landlord's Application. The Landlord also sought to apply the security deposit held in partial satisfaction of the Landlord's claims, which I allow. Accordingly, pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$100.00 which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$375.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$375.00)
TOTAL:	\$100.00

The Tenant's Claim

As the tenancy has ended based on the 10 Day Notice, it is not necessary for me to consider the Tenant's Application to cancel the 1 Month Notice. The Tenant's Application is dismissed, without leave to reapply.

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 \$100.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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*.

Dated: April 6, 2017

Residential Tenancy Branch