



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, CNR

Introduction

This hearing considered cross-applications pursuant to the *Residential Tenancy Act* (the “Act”).

The tenant seeks:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) pursuant to section 46;

The landlord seeks:

- an Order of Possession for unpaid rent pursuant to section 55;
- a Monetary Order for unpaid rent and damages pursuant to section 67;
- authorization to retain the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 10 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), dated March 2, 2017 was served on the tenant by posting on the rental unit door on that date. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord’s 10 Day Notice on March 5, 2017, three days after posting.

The landlord testified that the landlord’s application for dispute resolution dated March 13, 2017 was sent to the tenants by registered mail on that same date together with the landlord’s evidentiary materials. The landlord provided two Canada Post tracking numbers as evidence of service. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord’s application package on March 18, 2017, five days after its mailing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to monetary compensation as claimed?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This tenancy began in January, 2017. The rent is \$575.00 payable on the 1st of the month. A security deposit of \$287.50 was paid by the tenants at the start of the tenancy and still held by the landlord.

The landlord testified that at the time the 10 Day Notice was issued the tenancy was in arrears by \$575.00, the amount sought in the 10 Day Notice. The landlord testified that the tenant has not made payment since the 10 Day Notice was issued.

Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based.

In the present case the landlord provided undisputed evidence as the tenant did not attend. I find that the tenant was obligated to pay the monthly rent in the amount of \$575.00. I accept the landlord's evidence that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act*. Accordingly, I find that the tenant is 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, March 15, 2017. Therefore, I dismiss the tenant's application to cancel the 10 Day notice and find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$575.00. I issue a monetary award in the landlords' favour for unpaid rent of \$575.00 as at April 4, 2017, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$287.50 in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I dismiss the tenant's application.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$387.50 under the following terms, which allows the landlord to recover unpaid rent and the filing fee for their application:

Item	Amount
Unpaid Rent March	\$575.00
Filing Fees	\$100.00
Less Security Deposit	-\$287.50
Total Monetary Order	\$387.50

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 4, 2017

Residential Tenancy Branch