



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on March 17, 2017 (the "Application"). The Landlord applied for an order of possession for unpaid rent or utilities, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord attended the hearing on her own behalf and provided affirmed testimony. The Tenant did not attend the hearing.

According to the Landlord, the Application package, including the Notice of a Dispute Resolution Hearing and the documentary evidence, was served on the Tenant, in person, on March 18, 2017. A hand-written statement, signed by L.B., who witnessed service, was submitted with the Landlord's documentary evidence. I find the Landlord's Application package was received by the Tenant on March 18, 2017.

The Landlord was 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

The Landlord's Application sought only an order of possession for unpaid rent or utilities. However, as stated throughout the Application and during the Landlord's oral testimony, rent for March 2017 was not paid in full until March 18, 2017, and rent in the amount of \$525.00 remains outstanding for April 2017. The Landlord also testified the Tenant continues to occupy the rental unit. Accordingly, I find it appropriate in the

circumstances to amend the Landlord's Application to include a claim for a monetary order for unpaid rent, pursuant to section 64 of the *Act*.

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?

Background and Evidence

The Landlord testified the tenancy began on or about February 1, 2017. Rent in the amount of \$1,100.00 per month was due until April 1, 2017, at which time it was reduced to \$1,050.00 per month. The Tenant paid a security deposit to the Landlord in the amount of \$530.00, which the Landlord holds.

The Landlord testified the Tenant did not pay rent when due on March 1, 2017. Although the Tenant made a partial payment of \$450.00 on March 3, 2017, \$650.00 remained outstanding at that time. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 11, 2017 (the "10 Day Notice"). The 10 Day Notice was served on the Tenant, in person, on that date. A copy of the 10 Day Notice and a Proof of Service form were submitted with the Landlord's documentary evidence.

Further, the Landlord testified the Tenant paid only \$525.00 for rent on April 1, 2017, and that the balance of \$525.00 remains outstanding. The Tenant continues to reside in the rental unit.

The Landlord also sought to recover the \$100.00 filing fee paid to make the Application, and requested that they be permitted to apply the security deposit in partial satisfaction of the claim.

Analysis

Based on the unchallenged 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 after receipt to either pay rent in full or file an application for dispute resolution. When a tenant does not pay rent in full or file an application for dispute resolution, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, the Landlord testified, and I find, that the Tenant did not pay rent when due on March 1, 2017, although he did make a partial payment on March 3, 2017. Accordingly, the Landlord issued the 10 Day Notice, which I find was served on the Tenant on March 11, 2017. Accordingly, the Tenant had until March 16, 2017 to pay rent in full. However, the Tenant did not pay rent in full until March 18, 2017. Accordingly, as the Tenant did not pay rent in full within five days after receipt of the 10 Day Notice and did not dispute the 10 Day Notice by filing an application for dispute resolution, I find the Tenant is deemed to have 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.

In addition, the Landlord testified that rent was not paid in full on April 1, 2017, but that the Tenant did make a partial payment of \$525.00 on that date. The Landlord testified that rent in the amount of \$525.00 remains outstanding. The Tenant did not attend the hearing to dispute this amount. Accordingly, I find the Landlord is entitled to a monetary award of \$525.00 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. The Landlord also requested to apply the security deposit in partial satisfaction of my monetary order, which I allow, pursuant to section 72 of the *Act*.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$95.00, which has been calculated as follows:

Item	Amount
Unpaid rent:	\$525.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$530.00)
TOTAL:	\$95.00

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 \$95.00. 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: April 5, 2017

Residential Tenancy Branch