



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Landlord:	OPR MNR MNSD FF
	Tenant:	CNR ER OLC PSF

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 April 19, 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;
- an order permitting the landlord to retain the security deposit in partial satisfaction of the claim; and
- an order granting recovery of the filing fee.

The Landlord testified his Application package was served on the Tenant, in person, on April 19, 2017. The Landlord indicated his wife was present to witness service. I find the Tenant was served with the Landlord's Application package on that date.

The Tenant's Application is dated March 30, 2017 (the “Tenant's Application”). The Tenant applied for the following relief pursuant to the *Act*:

- an order cancelling a notice to end tenancy for unpaid rent or utilities;
- a monetary order for compensation for the cost of emergency repairs made;
- an order that the Landlord comply with the *Act*, regulation, or a tenancy agreement; and
- an order that the Landlord provide services or facilities required by the tenancy agreement or law.

The Landlord attended the hearing on his own behalf and provided affirmed testimony. The Tenant did not attend the hearing. Accordingly, the Tenant's Application is dismissed, without leave to reapply.

The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. In addition, the Landlord was asked to submit a copy of the notice to end tenancy for unpaid rent or utilities, and a copy of the written tenancy agreement between the parties, by 1:00 p.m. on May 4, 2017, which he did.

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 retain the security deposit in partial satisfaction of the claim?
4. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord testified the tenancy began roughly 1.5 years ago. Although initially a fixed-term agreement, he says the tenancy is currently on a month-to-month basis. Rent in the amount of \$1,200.00 per month is due on the first day of each month, plus approximately \$100.00 per month for utilities. The Tenant paid a security deposit of \$650.00, which the Landlord holds.

The tenancy agreement submitted by the Landlord after the hearing confirms the amount of rent due; however, it is vague with respect to the amount of utilities owing by the Tenant.

During the hearing, the Landlord testified that the Tenant did not pay rent when due on March 1, 2017. Although the Tenant subsequently made a partial payment of \$800.00, rent was not paid in full and \$500.00 for rent and utilities remains outstanding (\$400.00 + \$100.00). Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 20, 2017 (the "10 Day Notice"). The Landlord testified the 10 Day Notice was served on the Tenant by attaching a copy to the door of the Tenant's rental unit on March 24, 2017.

Further, the Landlord testified the Tenant did not pay rent when due for the months of April and May 2017. Currently, the Landlord testified that \$3,100.00 remains outstanding on account of unpaid rent and utilities.

Analysis

Based on all of the above, the evidence and unchallenged oral testimony, and on a balance of probabilities, I find:

As noted above, the Tenant's Application has been dismissed. When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. As I have dismissed the Tenant's Application and determined the 10 Day Notice – copies of which were submitted into evidence by both the Landlord and the Tenant – complied with section 52 of the *Act*, I grant the Landlord an order of possession. The Order will be effective two (2) days after service of the order on the Tenant.

Further, 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. In this case, the Landlord testified the Tenant had not paid rent when due. Accordingly, he served the 10 Day Notice on the Tenant on March 24, 2017. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to have been received three days later. I find the Tenant is deemed to have received the 10 Day Notice on March 27, 2017.

The Landlord testified that outstanding rent and utilities total \$3,100.00. Due to the uncertainty in the evidence concerning the amount of the utility payment, I decline to make an award for utilities. However, I am satisfied the Landlord has established an entitlement to recover \$2,800.00 in unpaid rent for the months of March 2017 (\$400.00), April 2017 (\$1,200.00), and May 2017 (\$1,200.00). Having been successful, the Landlord is also entitled to recover the \$100.00 filing fee.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$2,250.00, which has been calculated as follows:

Claim	Awarded
Outstanding rent:	\$2,800.00
Filing fee:	\$100.00
LESS security deposit:	(\$650.00)
TOTAL:	\$2,250.00

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service 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 \$2,250.00. 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: May 4, 2017

Residential Tenancy Branch