



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR MNR FF

Introduction

This hearing was convened as a result of the Application for Dispute Resolution (the “Application”) by the landlord under the *Residential Tenancy Act* (the “Act”). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

The landlord attended the teleconference hearing. The landlord was affirmed and the landlord was provided the opportunity to present his evidence. The landlord was also provided with an opportunity to ask questions about the hearing process.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), the landlord’s Application for Dispute Resolution (the “Application”) and documentary evidence were considered. The landlord provided affirmed testimony that the Notice of Hearing, Application and documentary evidence was served on the tenant by registered mail on April 20, 2017 to the rental unit address and that the tenant continues to occupy the rental unit. According to the tracking information submitted in evidence by the landlord, the tenant failed to claim the registered mail package and the package was eventually returned to the sender and marked “unclaimed”.

Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the *Act*. According to the online registered mail tracking website information the registered mail package was unclaimed by the tenant. I find the tenant was deemed served on the fifth day after mailing on April 25, 2017 in accordance with the *Act*. I note that refusal or neglect on the part of the tenant to pick up or accept a registered mail package does not constitute grounds for an Application for Review Consideration under the *Act*.

I have reviewed all 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 Matter

The landlord testified that in addition to the rent owed for April 2017, the tenant has subsequently not paid the any money for use and occupancy for the month of May 2017 and continues to occupy the rental unit. As a result, the landlord requested to amend the application to include loss of rent for May 2017. I find that request to amend the Application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I permit the landlord to amend the Application to include loss of \$800.00 rent for May 2017 for a total in unpaid rent and loss of rent of \$1,600.00 pursuant to section 64(3) of the *Act*.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

The landlord testified that a verbal tenancy agreement was formed with the tenant and that the tenancy began on June 1, 2015. Monthly rent in the amount of \$800.00 was due on the first day of each month. The landlord affirmed that the tenant did not pay a security deposit or pet damage deposit during the tenancy.

The landlord's monetary claim is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid April 2017 rent	\$800.00
2. Loss of May 2017 rent	\$800.00
TOTAL	\$1,600.00

The landlord testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 7, 2017 (the "10 Day Notice") was served on April 7, 2017 to the tenant's

husband at the rental unit and was witnessed by a third party which is supported by the Proof of Service document submitted in evidence by the landlord.

The 10 Day Notice indicates that the tenant failed to pay \$800.00 in rent due April 1, 2017. The effective vacancy date listed on the 10 Day Notice is April 20, 2017. The landlord affirmed that the tenant did not pay any rent for April 2017 and has not paid for use and occupancy of the rental unit for May 2017 either and did not dispute the 10 Day Notice.

The landlord is seeking an order of possession, a monetary order for unpaid rent and loss of rent and the recovery of the cost of the filing fee.

Analysis

Based on the undisputed testimony of the landlord and the undisputed documentary evidence before me, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenant failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice as the tenant failed to attend the hearing this date and that the 10 Day Notice was undisputed as a result. The effective vacancy date of the 10 Day Notice is listed as April 20, 2017. I find the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which was April 20, 2017. The tenant continues to occupy the rental unit. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I find the tenancy ended April 20, 2017 and that the tenant has been over-holding the rental unit since that date.

Claim for loss of rent – As the tenant was deemed served and did not attend the hearing, I find the Application of the landlord to be unopposed by the tenant. The landlord testified that he has suffered a total loss of \$1,600.00 in unpaid rent and loss of rent for the months of April 2017 and May 2017 at \$800.00 for each of those months. I find the landlord has met the burden of proof and has established a monetary claim of **\$1,600.00** comprised of unpaid rent and loss of rent for the months of April and May of 2017. The tenancy ended on April 20, 2017 and yet the tenant continues to over-hold the rental unit.

As the landlord has succeeded with their Application, I grant the landlord the recovery of the filing fee in the amount of **\$100.00**.

Monetary Order – I find that the landlord is entitled to a monetary order as follows:

ITEM DESCRIPTION	AMOUNT
1. Unpaid rent for April 2017	\$800.00
2. Loss of May 2017 rent	\$800.00
3. Filing fee	\$100.00
TOTAL BALANCE OWING BY TENANT TO LANDLORD	\$1,700.00

Given the above, and pursuant to sections 67 and 72 of the *Act*, I grant the landlord a monetary order in the amount of **\$1,700.00**.

Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. The tenancy ended on April 20, 2017.

The landlord has established a total monetary claim of \$1,700.00 as described above and has been granted a monetary order in that amount. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: May 19, 2017

Residential Tenancy Branch