



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 pursuant to the *Residential Tenancy Act* ("the Act") for: an Order of Possession for Unpaid Rent pursuant to section 55 and a monetary order for unpaid rent pursuant to section 67. The landlord initially applied by direct request, an ex parte application process. On review of the application, the adjudicator ordered that this application proceed by way of a participatory hearing to determine the details of the landlord's application.

The tenant/respondent did not attend this hearing, although I waited until 9:47 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord/applicant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

Preliminary Issue: Address for Service of Documents

The landlord's original application was set to a participatory hearing to determine why the address of service for the tenant differed from that on the residential tenancy agreement. I note that the landlord's original application package included a note stating he had sold his previous residence, the residence where the tenancy began and that both he and the tenant had moved to a new address. I accept the clear explanation by the landlord at this hearing. He testified that both he and the tenant have moved to a new residence and continued all other features of this tenancy agreement in accordance with the original agreement including rent amount, rent payment date and the security deposit amount as well as the general terms of the tenancy.

The residential tenancy agreement reflects the original address of this tenancy. A verbal residential tenancy agreement can be accepted in circumstances where the appropriate terms are agreed upon by both parties. Therefore, I find that the landlord and tenant's agreement has continued at its core with a change of address by verbal agreement. I note that this address change should be made and signed by each party acknowledging

the change to avoid future confusion. I find that this discrepancy in the address of the tenant's rental unit has been sufficiently addressed and the matter of service can be determined.

The landlord testified that he personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on April 2, 2017. The landlord testified that he personally served the tenant with his Application for Dispute Resolution ("ADR") by Direct Request on April 19, 2017. The landlord submitted proof of service documents for each personal service to the tenant. The landlord testified that he also personally served the tenant with the Notice of Hearing for this date on May 10, 2017. Based on the written submissions and testimony of the landlord and in accordance with section 89 of the Act, I find that the tenant has been duly served with the 10 Day Notice on April 2, 2017, the ADR by Direct Request on April 19, 2017, and the Notice of Hearing on May 10, 2017.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to monetary order for unpaid rent?

Background and Evidence

The landlord submitted a copy of the residential tenancy agreement with respect to the ongoing tenancy between the landlord and the tenant. He testified that the tenancy agreement began on April 15, 2013 at the address provided on the residential tenancy agreement. The landlord testified that the tenant resides in a separate unit in the landlord's home. The landlord testified that, when the landlord moved to a new residence, the tenant also moved and the tenancy agreement continued. He testified that the rental unit/residence address was not updated after the move.

The landlord testified that the residential tenancy agreement with the tenant has not changed as a result of the move. He testified that the rental amount continues to be payable on the 1st of each month in the amount of \$950.00. The landlord testified that he continues to hold the tenant's original \$500.00 security deposit paid on May 1, 2013.

When the tenant failed to pay rent on April 1, 2017, the landlord personally served the tenant with a 10 Day Notice to End Tenancy the following day (April 2, 2017). The landlord testified that the tenant paid \$450.00 on April 10, 2017. He provided a copy of the \$450.00 cheque from the tenant. He testified that the tenant advised him he could not pay rent.

The landlord sought an Order of Possession for the rental unit based on the tenant's failure to pay rent. The landlord testified that, as of the date of this hearing, the tenant has not paid the balance of rent (\$500.00) owed for April 2017 nor has he paid any rent for the month of May 2017. The landlord testified that the tenant continues to reside in the rental unit.

The landlord also applied for a monetary award of \$1450.00 - the total rental arrears for months of April 2017 and May 2017.

Analysis

Section 26(1) of the Act establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." According to the undisputed testimony of the landlord at this hearing, the tenant failed to pay the April 2017 rent within five days of receiving the 10 Day Notice to End Tenancy.

While the tenant paid the landlord \$450.00 on April 10, 2017, the tenant did not pay the outstanding rent in full. The tenant has not made application pursuant to section 46(4) of the Act to dispute the 10 Day Notice within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by the corrected effective date of April 12, 2017. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

I find that the landlord is entitled to receive an order for unpaid rent for the unpaid portion of April 2017 as well as the full rental amount for May 2017. I accept the uncontested evidence offered by the landlord with respect to the amount of rent owed by the tenant. I am issuing the attached monetary order that includes the landlord's application for \$1450.00 for partial rental arrears in April 2017 and unpaid rent for May 2017.

The landlord testified that he continues to hold a security deposit of \$500.00 plus any interest from May 1, 2013 (the date of payment of the security deposit) to the date of this decision for this tenancy. I will allow the landlord to retain the security deposit *plus any interest* in partial satisfaction of the monetary award. There is no interest payable for this period.

Conclusion

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlords as follows:

Rental Arrears for April 2017	\$500.00
Rental Arrears for May 2017	950.00
Less Security Deposit	-500.00
Total Monetary Award	\$950.00

The landlord is provided with this Order in the above terms and 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: May 31, 2017

Residential Tenancy Branch