



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 dealt with a landlord's Application for Dispute Resolution (the "Application") under the *Residential Tenancy Act* (the "Act") to obtain 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 appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The landlord testified that the Notice of Hearing, Application and documentary evidence were served on the tenant by personal service at the rental unit with a witness present on April 29, 2017 at 7:30 p.m. The landlord submitted a Proof of Service document signed by witness G.B. in evidence in support. Based on the above, I find the tenant was served with the Notice of Hearing, Application and documentary evidence on April 29, 2017. As the tenant did not attend the hearing, I find that this Application is undisputed and unopposed by the tenant.

Preliminary and Procedural Matters

During the hearing, the landlord requested to retain the tenant's security deposit verbally during the hearing and as a result and pursuant to sections 67 and 72 of the *Act*, if the landlord is entitled to a monetary claim, I will offset any amount with the tenant's security deposit plus any applicable interest under the *Act*.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on October 12, 2016. Monthly rent in the amount of \$1,000.00 was due on the first day of each month. The tenant paid a security deposit of \$500.00 at the start of the tenancy which the landlord continues to hold.

The landlord confirmed service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 15, 2017 (the "10 Day Notice") by personal service with a witness on April 18, 2017 at the rental unit. A Proof of Service document was submitted in evidence that supports that witness A.H. witnessed the landlord serve the 10 Day Notice in person on the tenant on April 18, 2017. The 10 Day Notice included an effective vacancy date of April 25, 2017 and indicated that \$500.00 was owed as of April 15, 2017 which the landlord clarified was owed from April 1, 2017 onwards. According to the landlord, the tenant did not dispute the 10 Day Notice and did not pay any of the rent owed within five days of receiving the 10 Day Notice.

The landlord confirmed that the tenant continues to occupy the rental unit by keeping his personal items in the rental unit and that he was last seen in the rental unit in the last week of May 2017. As a result, the landlord is seeking an order of possession as and a monetary order for unpaid rent for \$500.00 of April 2017 rent and loss of May 2017 rent of \$1,000.00 for a total of \$1,500.00 in unpaid and loss of rent.

Analysis

Based on the undisputed documentary evidence and unopposed testimony provided by the landlord during the hearing, 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. The effective vacancy date of the 10 Day Notice is listed as April 25, 2017 which automatically corrects under section 53 of the *Act* to April 28, 2017. I find the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the

tenancy ended on the corrected effective vacancy date of the 10 Day Notice, which was April 28, 2017. The tenant continues to occupy the rental unit by leaving personal items in the rental unit. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

Claim for unpaid rent and loss of rent –The landlord testified that \$1,500.00 in unpaid and loss of rent is owed by the tenant as of the date of the hearing. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$1,500.00** comprised of rent arrears and loss of rent.

The landlord is holding the tenant's security deposit of \$500.00 which was paid by the tenant at the start of the tenancy and has accrued no interest. As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**.

Monetary Order – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit plus interest as follows:

Rent arrears and loss of owed by tenant (\$500.00 for April 2017 and \$1,000.00 for May 2017)	\$1,500.00
Filing fee	\$100.00
Subtotal	\$1,600.00
<i>(Less tenant's security deposit including interest)</i>	<i>-(\$500.00)</i>
TOTAL BALANCE OWING BY TENANT TO LANDLORD	\$1,100.00

Given the above, and pursuant to sections 67 and 72 of the *Act*, I authorize the landlord to retain the tenant's full security deposit and \$0.00 in interest which totals \$500.00 from the \$1,600.00 owing by the tenant to the landlord in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order for the balance owing by the tenant to the landlord in the amount of **\$1,100.00**.

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 landlord has established a total monetary claim of \$1,600.00 as indicated above. The landlord is authorized to retain the tenant's full security deposit including \$0.00 in interest which totals \$500.00 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of \$1,100.00. 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: June 2, 2017

Residential Tenancy Branch