



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNDC, FF

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;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package via Canada Post Registered Mail on May 10, 2017. The landlord has provided a copy of the Canada Post Customer Receipt and Tracking label as confirmation of service. The landlord also stated that the tenant was served with the submitted documentary evidence in person on May 31, 2017. The landlord's witness was called and confirmed that he was present when the tenant was served with the documents on May 31, 2017. I accept the undisputed evidence of the landlord and find that the tenant was properly served as per sections 88 and 89 of the Act. Under section 90 of the Act I deem that the tenant was served 5 days later on May 15, 2017.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord stated that there was no signed tenancy agreement, but that a verbal agreement on a month-to-month basis was made that began on April 1, 2016. The monthly rent is \$525.00 that was payable on the 1st day of each month. No security deposit was paid. The landlord stated that the tenant was responsible for utilities.

The landlord seeks an order of possession and a monetary order for unpaid rent of \$1,075.00. The landlord stated that the tenant has a history of paying rent late.

The landlord clarified that the monetary claim is:

\$200.00	Unpaid Rent, January 2017
\$200.00	Unpaid Rent, February 2017
\$175.00	Unpaid Rent, March 2017
\$25.00	Unpaid Rent, April 2017
\$525.00	Unpaid Rent, May 2017

The landlord provided a copy of the 10 Day Notice dated May 1, 2017 which states that the tenant failed to pay rent of \$575.00 that was due on March 1, 2017. The 10 Day Notice sets out an effective end of tenancy date of May 8, 2017. The landlord stated that the tenant was served with the 10 Day Notice dated May 1, 2017 on May 1, 2017 in person with a witness, K.W. The landlord's witness confirmed that he was present on May 1, 2017 when the tenant was served with the 10 Day Notice.

It was clarified with the landlord during the hearing that his application for a monetary claim of \$1,075.00 did not equal the monetary claim amount of \$1,125.00 provided by the landlord in his direct testimony. The landlord stated that he was aware that there was a difference in the amounts and understood that he would be limited to the amount filed of \$1,075.00.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I accept the undisputed affirmed evidence of the landlord and find that the tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made an application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 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 May 8, 2017. As that has not occurred, I find that the landlord is entitled to a two-day order of possession. The landlord will be given a formal order of possession which must be served on the tenant(s).

I also accept the undisputed affirmed evidence of the landlord based upon the 10 Day Notice dated May 1, 2017 and the undisputed affirmed direct testimony that the tenant failed to pay rent as listed below.

\$200.00	Unpaid Rent, January 2017
\$200.00	Unpaid Rent, February 2017
\$175.00	Unpaid Rent, March 2017
\$25.00	Unpaid Rent, April 2017
\$525.00	Unpaid Rent, May 2017

As such, I find the landlord has established a claim for unpaid rent as listed above for \$1,125.00. However as discussed with the landlord, the landlord's claim is limited to the amount filed of \$1,075.00.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession for unpaid rent.

The landlord is granted a monetary order for \$1,175.00.

These orders must be served upon the tenant. Should the tenant fail to comply with the order(s), the order(s) may be filed with the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia 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: June 15, 2017

Residential Tenancy Branch