



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and damages pursuant to section 67; and
- recovery of the filing fees for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was assisted by her daughter, JT.

The landlord testified that she personally served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") to the tenant at the rental unit on April 5, 2016. The tenant disputed that she had ever been served with the 10 Day Notice.

The landlord testified that the landlord's application for dispute resolution (the "Application") was served on the tenant by registered mail sent on May 10, 2017. The landlord provided a copy of the Canada Post tracking number as evidence of service. The tenant confirmed that she received the landlord's application for dispute resolution. I find that the tenant was served with the landlord's application for dispute resolution in accordance with section 89 of the Act.

At the At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed the tenant failed to pay the June rent amount and that the total arrears as of the date of the hearing is \$3,175.00. Pursuant to section 64(3)(c) of the Act and Rule 4.2 of the Rules of Procedure, as additional rent becoming due is

reasonably foreseeable, I amend the landlord's Application to increase the landlord's monetary claim from \$2,100.00 to \$3,175.00.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to monetary compensation for unpaid rent as claimed?

Is the landlord entitled to recover the filing fee of this application from the tenant?

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 claim and my findings are set out below.

This tenancy began in June, 2015. The parties disagree on what the monthly amount of rent. The landlord testified that the rent is \$1,075.00, while the tenant testified that the rent is \$1,050.00. The landlord testified that there was no written tenancy agreement signed by the parties. The tenant testified that she paid a security deposit at the start of the tenancy which was the equivalent of one half of the monthly rent. She initially said that the amount of the security deposit was \$500.00 but subsequently recalculated the amount and said it was \$525.00, half of \$1,050.00. The landlord did not have records of a security deposit being paid.

The landlord testified that the tenant has failed to pay the full rent since January, 2017. The landlord said that the tenancy was in arrears by \$1,025.00 on April, 5, 2017 when the 10 Day Notice was issued. The landlord said that the tenant subsequently failed to pay any rent for the months of May and June, 2017 and the total arrears is \$3,175.00.

The tenant disputes the landlord's claim. The tenant provided contradictory testimony at various times in the hearing. She initially said that she has made full rent payment in cash and was not provided a receipt by the landlord. She also said that she has withheld the rent as the landlord has failed to keep the rental unit in a state of repair.

Analysis

Given the conflicting testimony regarding service of the 10 Day Notice, I must first turn to a determination of credibility. I have considered the testimonies of the parties, their

content and demeanor as well as whether it is consistent with the other evidence and circumstances of this tenancy.

Considered in its totality, I do not find the tenant's assertion that she was not served with the 10 Day Notice to be at all credible. The tenant's testimony was often contradictory and argumentative. The tenant contradicted her own testimony throughout the hearing. I found the landlord's evidence to be more convincing than that of the tenant. The landlord testified that the 10 Day Notice was served personally on the tenant in the presence of a witness. The landlord provided cogent recollection of the time and date service was performed and submitted into written evidence a copy of the Proof of Service form signed at that time. I found the landlord's evidence to be forthright and consistent. I am satisfied that the landlord has demonstrated on a balance of probabilities that the 10 Day Notice was served on the tenant in accordance with section 88 of the *Act*.

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant is deemed to have received the 10 Day Notice on April 5, 2017. I accept the landlord's evidence that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenant dispute the 10 Day Notice within that 5 day period. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, April 15, 2017. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the landlord's evidence that the total amount of arrears for this tenancy is \$3,175.00. I find there is insufficient evidence to determine if a security deposit was paid for this tenancy. I issue a monetary award for unpaid rent owing of \$3,175.00 as at June 19, 2017, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour under the following terms:

Rental Arrears for January 2017	\$150.00
Rental Arrears for February 2017	\$150.00
Rental Arrears for March 2017	\$150.00
Rental Arrears for April 2017	\$575.00
Rental Arrears for May 2017	\$1,075.00
Rental Arrears for June 2017	\$1,075.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$3,275.00

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: June 19, 2017

Residential Tenancy Branch