



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes: OPR, MNR

Introduction:

A hearing was convened under the *Residential Tenancy Act* (the “Act”) to deal with the landlord’s application based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 8, 2017 (the “10 Day Notice”). The landlord applied for an order of possession for unpaid rent and a monetary order for unpaid rent.

The tenant did not attend the hearing. An agent of the landlord society attended and was given a full opportunity to be heard, to present documentary evidence and to make submissions.

As the tenant did not attend the hearing, service of the landlord’s application and the notice of hearing were considered. The landlord provided affirmed testimony that these materials were sent to the tenant by registered mail on June 6, 2017. A Canada Post tracking number was provided in support. I accept that the tenant has been served in accordance with the Act.

The landlord amended its application during the hearing to add a claim for outstanding June and July rent and I accepted the amendment. Rule 4.2 of the Rules of Procedure allows for amendments at the time of hearing with respect to matters that can reasonably be anticipated, such this.

Issues to be Decided

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

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

According to the written tenancy agreement in evidence and the landlord’s affirmed and undisputed evidence, this tenancy began November 1, 2000. It is a month to month tenancy with a current rent of \$366.00 payable on the first day of each month. A security deposit of \$122.00 was paid at the beginning of the tenancy and landlord continues to hold that amount.

An accounting of the tenant's arrears was provided, showing that the tenant owes rent for October, 2016 and January, 2017 through May, 2017, inclusive. The landlord also charges an NSF fee of \$20.00 per month.

The landlord's agent testified that the tenant was served with the 10 Day Notice on by registered mail, and the tracking information was in evidence showing that the tenant signed for 10 Day Notice on May 10, 2017.

The landlord's agent also said that the tenant has not paid June or July's rent. She has attempted to communicate with the tenant, who remains in the rental unit, but he has shut his door on her. The tenant has not filed an application to dispute the 10 Day Notice.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. Based on the landlord's undisputed testimony and the registered mail tracking information in evidence, I find that the tenant was served with the 10 Day Notice on May 10, 2017. I further find that he did not file an application to dispute the 10 Day Notice or pay the overdue rent.

Section 46(5) of the Act provides that if a tenant does not pay the amount outstanding or apply to dispute a 10 Day Notice within five days of receipt, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must vacate the rental unit by that date.

In accordance with section 46(5) of the Act, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on May 23, 2017, the effective date on the 10 Day Notice. The tenant and anyone on the premises were required to vacate the premises by that date.

As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the Act. I find that the landlord's 10 Day Notice complies with section 52 of the Act.

Sections 7 and 67 of the Act establish that a tenant who does not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. The landlord provided undisputed evidence that the tenant owes \$2,925.00 in unpaid rent and I award the landlord this amount. I do not award the landlord the NSF fees claimed as there is no provision for NSF fees in the tenancy agreement.

As the landlord was successful in this application, I find that the landlord is also entitled to recover the \$100.00 filing fee.

The landlord continues to hold the tenant's security deposit of \$122.00. Over the period of this tenancy, there is \$8.55 in interest payable on the deposit. In accordance with the offsetting provisions of section 72 of the Act, I authorize and order the landlord to retain the award.

Conclusion

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

I issue a monetary order for the landlord in the following terms, which allows the landlord to obtain a monetary award for unpaid rent and the filing fee, and to retain the security deposit for this tenancy:

Item	Amount
Unpaid rent (October, 2016 and January – July, 2017)	\$2,925.00
Filing fee	\$100.00
Less security deposit	-\$130.55
Total Monetary Order	\$2,894.45

I issue a monetary order in the landlord's favour in the amount of **\$2,894.45** against the tenant. The tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, it 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 Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: July 28, 2017

Residential Tenancy Branch