



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Little Oak Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The matter was subsequently referred to a participatory hearing, held on September 12, 2017. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The Landlord's Agent, D.L., provided testimony at the hearing. The Tenant did not attend the hearing.

The Landlord's Agent testified the Notice of Hearing along with supporting documentary evidence was sent to the Tenant by registered mail on August 9, 2017. I find the Tenant received this package on August 14, 2017, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Landlord provided a copy of the tenancy agreement between the parties. It confirms the tenancy began on July 1, 2016. The tenancy agreement was for a fixed term until the end of June 2017. Rent for the fixed term was paid in advance in the amount of \$21,600.00. The Landlord's Agent testified that a new oral tenancy was established in June of 2017. Rent was set at \$1,866.00 per month, due on the first day of each month, and the tenancy was for a fixed term, ending on December 31, 2017. A written tenancy agreement with the terms of the new 6 month fixed term lease was going to be drafted but the Landlord's Agent testified that the Tenant has stopped paying rent and the situation has degraded. However, the Tenant remains in the unit.

The Landlord provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice). The Landlord testified that the 10 Day Notice was served to the Tenant by attaching a copy to the door of the rental unit on July 15, 2017, and was witnessed by an individual named T.S. The 10 Day Notice indicated that the amount of outstanding rent accrued at that time was \$1,891.00 (\$1,866.00 plus \$25.00 late fee). The Landlord testified that this amount represented rent for the month of July 2017.

The Landlord also testified that no rent has been paid since giving the 10 Day Notice to the Tenant. Accordingly, the Landlord stated that rent is still outstanding and has not been paid as required on July 1, August 1, or September 1 of 2017. The Landlord testified that the Tenant now owes 3 months' rent (3x \$1,866.00), at the time of this hearing. The Landlord's Agent asked for any Monetary Order to reflect the additional rent accrued since the 10 Day Notice was issued in July. The Landlord's Agent stated that he wants to recover the 3 months' rent, but was not concerned with the \$25.00 late fees. He also asked to recover the cost of the filing fee.

The Tenant did not attend the hearing to dispute the evidence provided by the Landlord.

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

I am satisfied that on July 15, 2017, the Landlord issued the 10 Day Notice and posted it to the front door of the rental unit. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 3 days later. I find the Tenant is deemed to have received the 10 Day Notice on July 18, 2017.

The Tenant had 5 days to pay rent in full or file an application for dispute resolution. There is no evidence before me that the Tenant did either. I find the Tenant is conclusively presumed to have accepted the end of the tenancy. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

With respect to the Landlord's request for a Monetary Order for unpaid rent, I find there is sufficient evidence before me to demonstrate that the Tenant owes and has failed to pay rent in full for July, August, and September of 2017 at a monthly rate of \$1,866.00, totalling \$5,598.00 in unpaid rent as of the time of this hearing. Further, the Landlord's Agent requested that they be able to recover the \$100 filing fee for this application.

Pursuant to sections 72 of the *Act*, I grant the Landlord the \$100 filing fee. In summary, I grant the monetary order based on the following:

Claim	Amount
Unpaid rent: July- September of 2017	3 x \$1,866.00
Filing Fee	\$100.00

TOTAL:	\$5,698.00
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Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$5,698.00** comprised of rent owed. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: September 12, 2017

Residential Tenancy Branch