



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR MNR MNDC MNSD FF
Tenant: CNR O

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application for Dispute Resolution, dated July 24, 2017, was amended by two Amendments to an Application for Dispute Resolution, received at the Residential Tenancy Branch on August 22 and September 11, 2017, respectively (the “Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities
- a monetary order for compensation for damage or loss;
- an order permitting the Landlord to retain all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution, dated July 24, 2017, was amended by an Amendment to an Application for Dispute Resolution, received at the Residential Tenancy Branch on September 8, 2017 (the “Tenant’s Application”). The Tenant applied for the following relief pursuant to the *Act*:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 9, 2017;
- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 2, 2017; and
- other unspecified relief.

The Landlord was represented at the hearing by P.M., an agent. A witness for the Landlord, G.B., was also in attendance at the hearing. The Tenant attended the hearing on his own behalf and provided affirmed testimony. All in attendance provided a solemn affirmation.

On behalf of the Landlord, P.M. testified the Landlord's Application package, subsequent amendments, and documentary evidence packages were served on the Tenant by registered mail. The Tenant acknowledged receipt of these documents.

The Tenant testified he served the Tenant's Application package on the Landlord in person. The subsequent amendment and documentary evidence were served on the Landlord by registered mail. P.M. acknowledged receipt of these documents on behalf of the Landlord.

No issues were raised with respect to service or receipt of the above documents. The parties were provided with 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

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?
3. Is the Landlord entitled to a monetary order for compensation for damage or loss?
4. Is the Landlord entitled to an order permitting the Landlord to retain all or part of the security deposit or pet damage deposit?
5. Is the Landlord entitled to an order granting recovery of the filing fee?
6. Is the Tenant entitled to an order cancelling the notices to end tenancy for unpaid rent or utilities?

Background and Evidence

The Landlord submitted a copy of the tenancy agreement between the parties into evidence. It confirmed the tenancy began on November 15, 1996. The parties confirmed that rent is currently due in the amount of \$1,543.00 per month, payable on the first day of each month. The Tenant paid a security deposit of \$550.00, which the Landlord holds.

On behalf of the Landlord, P.M. testified the Tenant did not pay rent when due on July 1, 2017. At that time, \$1,671.00 was outstanding. This amount was comprised of \$128.00 in previously unpaid rent and \$1,543.00 for rent due on July 1, 2017. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, which was served on the Tenant by posting a copy to the door of the Tenant's rental unit on July 9, 2017 (the "10 Day Notice"). A copy of the 10 Day Notice was submitted into evidence by the Landlord, as was a Proof of Service document.

The Landlord testified that rent was also not paid when due on August 1 and September 1, 2017. As a result, the Landlord issued a subsequent 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 2, 2017. The practical effect of this subsequent notice was to update the amount of rent outstanding. According to P.M., rent in the amount of \$4,757.00 is currently outstanding.

In reply, the Tenant agreed rent has not been paid as claimed by P.M. However, he testified that he was unable to pay rent because of a break-in at his rental unit. According to the Tenant, the individual or individuals who broke into his rental unit stole and cashed cheques totalling \$1,800.00. The Tenant holds the Landlord responsible for failing to provide a secure building. In addition, in specific reference to the \$128.00 amount outstanding prior to July 1, 2017, the Tenant testified that a rent increase, which took effect in December 2016, was illegal.

Analysis

Based on all of the above, the evidence and unchallenged testimony, and on a balance of probabilities, I find as follows.

Section 26 of the *Act* confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the 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 for unpaid rent or utilities. A tenant has five days after receipt of a notice to end tenancy for unpaid rent or utilities to either pay rent in full or dispute the notice by filing an application for dispute resolution.

In this case, P.M. testified, and I find, that the 10 Day Notice was served on the Tenant by posting a copy to the door of the Tenant's rental unit on July 9, 2017. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received three days later. I find the Tenant is deemed to have received the 10 Day Notice on July 12, 2017. Accordingly, the Tenant had until July 17, 2017, to either pay rent in full or dispute the 10 Day Notice.

The Tenant disputed the 10 Day Notice in accordance with section 46 of the *Act*. However, he acknowledged during the hearing that rent has not been paid as claimed by the Landlord. He submitted that his losses as a result of the break-in should be borne by the Landlord for failing to provide adequate security. The Tenant also suggested there was an illegal rent increase dating back to December 2016. However, I find there is insufficient evidence before me to conclude the Landlord bears any responsibility for the Tenant's losses as a result of the break-in, or that there was an illegal rent increase. I also find there is insufficient evidence before me to conclude the Tenant had a right under the *Act* to withhold rent.

I find that rent in the amount of \$4,757.00 is outstanding. Accordingly, pursuant to section 55 of the *Act*, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

In addition, I find the Landlord is entitled to a monetary award in the amount of \$4,757.00 for unpaid rent. Having been successful, the Landlord is entitled to recover the filing fee paid to make the Landlord's Application. I allow the Landlord's request to

apply the security deposit in partial satisfaction of the Landlord's claim. However, the Tenant is entitled to be credited with interest that has accrued on the security deposit, as calculated using the interest calculator available on the Residential Tenancy Branch website. The amount of interest on the security deposit from November 15, 1996, to September 27, 2017, is \$74.91.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$4,232.09, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$4,757.00
Filing fee:	\$100.00
LESS security deposit + interest:	(\$624.91)
TOTAL:	\$4,232.09

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$4,232.09. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Tenant's Application is dismissed, without leave to reapply.

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 27, 2017

Residential Tenancy Branch