



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution by Direct Request. The matter was subsequently referred to a participatory hearing, held on September 8, 2017 (the "Application"). 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, H.N., provided affirmed testimony at the hearing. The Tenant did not attend the hearing.

The landlord testified the Notice of Hearing along with supporting documentary evidence was sent to the Tenant by registered mail on August 18, 2017. I find the Tenant received this package on August 23, 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 into evidence. It confirms the tenancy began on July 1, 2016. Rent in the amount of \$2,000.00 per month is due on the first day of each month. The Landlord holds a security deposit in the amount of \$1,000.00.

The Landlord testified that the Tenant only paid \$1,000.00 towards rent for the month of May 2017, and has not paid anything since that time. The Landlord also provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), hand delivered to the Tenant on July 14, 2017. Service of this document was witnessed by H.S. The 10 Day Notice indicated that the amount of outstanding debt accrued at that time was \$5,000.00. The Landlord testified that this amount represented the outstanding rent for the months of May, June, and July 2017.

The Landlord also testified that no rent has been paid since giving the 10 Day Notice to the Tenant. The Landlord testified that the Tenant now owes \$9,000.00 in unpaid rent, at the time of this hearing which includes the non-payment of rent for August and September 2017.

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, within the 5 days allowed, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In this case, based on the affirmed testimony and the documentary evidence before me, I find that the Tenant has not paid rent in full, when due, since May 1, 2017.

On July 14, 2017, the Landlord issued the 10 Day Notice by leaving a copy with the Tenant. I find the Tenant received the 10 Day Notice on July 14, 2017, pursuant to sections 88 and 90 of the *Act*.

The Tenant had 5 days to pay rent in full or file an application for dispute resolution. As 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 turn to the following Rules of Procedure (4.2):

Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

In consideration of this, I allow the Landlord to amend their application to include rent that has accrued since the original application date. Further, I find there is sufficient evidence before me to demonstrate that the Tenant owes and has failed to pay the following:

Claim	Amount
Unpaid rent (2017):	
May (Tenant paid half)	\$1,000.00
June	\$2,000.00
July	\$2,000.00
August	\$2,000.00
September	\$2,000.00
TOTAL:	\$9,000.00

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 **\$9,000.00** 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 08, 2017

Residential Tenancy Branch