



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, FF, MNR, O

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed June 14, 2017 wherein the Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent as well as a 1 Month Notice to End Tenancy for Cause, a monetary order for unpaid rent, authority to retain the Tenant's security deposit and other unspecified relief.

The hearing was conducted by teleconference on September 14, 2017 at 9:00 a.m. Only the Landlord called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that he served the Tenant with the Notice of Hearing and the Application by registered mail on July 14, 2017. He confirmed that the package was returned as unclaimed. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of July 19, 2017 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord/Tenant's submissions and

or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Landlord testified that the Tenant vacated the rental unit on or about August 20, 2017 such and an Order of Possession was not required.

Issues to be Decided

1. Should the Landlord be entitled to monetary compensation from the Tenant for unpaid rent?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began January 1, 2016. Monthly rent was payable in the amount of \$800.00 and the Tenant paid a \$400.00 security deposit.

The Landlord testified that the Tenant failed to pay rent for June, July and August 2017 such that the sum of \$2,400.00 was owed for rent.

Analysis

Based on the above, the Landlord's undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

Under section 26 of the *Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation the Tenant had no authority under the *Act* to not pay rent.

I find that the Tenant as obligated to pay rent in the amount of \$800.00 per month. I accept the Landlord's testimony that the Tenant failed to pay rent for June, July and August 2017 such that the Tenant owes \$2,400.00 in rent. I therefore grant the Landlord compensation in this amount.

I also award the Landlord recovery of the \$100.00 filing fee for a total of \$2,500.00.

Section 72 of the *Act* provides as follows:

- 72** (1) The director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

I therefore grant the Landlord authority to retain the Tenant's \$400.00 security deposit towards the \$2,500.00 awarded. Further I grant the Landlord a Monetary Order for the balance due in the amount of **\$2,100.00**. The Landlord must serve the Monetary Order on the Tenant and may file and enforce the Order in the B.C. Provincial Court (Small Claims Division).

As the Tenant vacated the rental unit prior to the hearing, an Order of Possession was not required. The Landlord was cautioned that the Order may not have been awarded, as he must provide a copy of any notices to end tenancy in evidence to ensure they comply with section 52 of the *Residential Tenancy Act*.

Conclusion

The Landlord is granted monetary compensation for unpaid rent for June, July and August 2017 in the amount of \$2,400.00. The Landlord is also entitled to recover the \$100.00 filing fee for a total award of \$2,500.00. The Landlord may retain the security deposit and is granted a monetary order for the balance due of **\$2,100.00**.

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 14, 2017

Residential Tenancy Branch