



Dispute Resolution Services

Page: 1

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. The participatory hearing was held on September 15, 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, W.L., provided affirmed testimony at the hearing. The Tenant did not attend the hearing.

The Landlord's Agent testified that he sent a copy of the Notice of Hearing along with supporting documentary evidence to each of the Tenants on August 21, 2017, by registered mail. I find the Tenant received this package on August 26, 2017, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The Landlord's Agent has requested to amend their application to include rent that has accrued since the original application date (for September 2017). 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.

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's Agent provided a copy of the tenancy agreement between the parties into evidence. It confirms the tenancy began on June 2, 2017. Rent in the amount of \$1,280.00 is due on the first day of each month. The Landlord holds a security deposit of \$640.00.

The Landlord's Agent testified that the Tenant failed to pay rent for August and September of 2017. The Landlord also provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), which was posted to the Tenants door on August 2, 2017, by the Landlord (witnessed by B.C.). The 10 Day Notice specified that \$1,280.00 was unpaid at the time. The Tenant has not made any payments to the Landlord since the notice was issued and now owes September rent, on top of the \$1,280.00 for August.

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(1) 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, under section 46(4) of the *Act*, 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, as per section 46(5) of the *Act*.

In this case, I find that the Tenant has not paid rent when due (\$1,280.00 on August 1, 2017).

On August 2, 2017, the Landlord issued the 10 Day Notice by posting a copy to the door of the rental unit. Pursuant to section 88 and 90 of the *Act*, documents delivered in this manner are deemed served after 3 days. I find the Tenant is deemed to have received the 10 Day Notice on August 5, 2017.

The Tenant had 5 days to pay rent in full or file an application for dispute resolution. I find no evidence that the Tenant did either. As such, I find the Tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice (August 15, 2017). 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 \$2,560.00 (August and September of 2017) in past due rent.

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 **\$2,560.00** 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 15, 2017

Residential Tenancy Branch