



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on October 11, 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;
- a monetary order for unpaid rent or utilities;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and,
- to recover the filing fee from the tenant for the cost of this application.

The landlord's agent (the agent) attended the hearing and provided affirmed testimony. The tenant did not attend the hearing. The landlord testified that she sent the Notice of Hearing package to the tenant on August 30, 2017, by registered mail. I find the tenant is deemed to have received this package on September 4, 2017, the fifth day after its registered mailing, pursuant to Section 90 of the Act.

The agent stated that she does not require the 4th ground listed above. In consideration of this, I hereby amend the agent's application accordingly.

The agent 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.

Issue(s) 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?
3. Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
4. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The agent provided a copy of the tenancy agreement between the parties into evidence. It confirms the tenancy began on February 3, 2017. Rent in the amount of \$600.00 is due on the first day of each month. The agent holds a security deposit of \$300.00. The tenancy agreement also states that a fee of \$25.00 will be charged for late rent payments.

The agent testified that the tenant only paid partial rent for June of 2017, and \$8.03 is still outstanding for that month. The agent also stated that the tenant has failed to pay rent for the months of July, August, September, and October of 2017. The tenant has not made any payments since June.

The agent 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 July 5, 2017. Service of this document was witnessed by a third party. The 10 Day Notice specified that \$608.03 was unpaid at that time.

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 after receipt, under section 46(4) of the *Act*, 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 had a balance of unpaid rent in the amount of \$608.03 at the time the 10 Day Notice was issued. On July 5, 2017, the 10 Day Notice was posted 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 July 8, 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. The agent 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 agent's request for a monetary order for unpaid rent, I find there is sufficient evidence from the agent's to demonstrate that the tenant owes and has failed to pay full rent for June of 2017 (still owes \$8.03), and has failed to pay any rent for July-October (inclusive) of 2017.

The agent requested that they be able to retain the security deposit of \$300.00 to offset the amount of rent owed, and to recover the \$100 filing fee for this application. The agent also requested to be compensated for late rent fees (\$25.00) for the months of July, August, September, and October of 2017.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the agent was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the agent, be kept and used to offset the amount of rent still owed by the tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Unpaid rent in 2017:	

June	\$8.03
July-October	\$600.00x4
Other:	
Filing fee	\$100.00
Late rent fee (4x\$25.00)	\$100.00
Less:	
Security Deposit currently held by Agent	(\$300.00)
TOTAL:	\$2,308.03

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 **\$2,308.03**. 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: October 11, 2017

Residential Tenancy Branch