



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. The participatory hearing was held on October 19, 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, the "Agent", provided affirmed testimony at the hearing. The Tenant did not attend the hearing.

The Agent testified that one of the Tenants, A.V., moved out in August sometime, after the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) was issued. The Agent testified that he served the Notice of Hearing along with supporting documentary evidence to the remaining Tenant, K.H., on September 10, 2017, by delivering it to her in person. The Agent stated that he brought a third party with him as a witness. I find the Tenant received this package on September 10, 2017.

The Agent has requested to amend his application to include rent that has accrued since the original application date (for September and October 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 Agent to amend their application to include rent that has accrued since the original application date.

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.

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 Agent testified that rent, in the amount of \$1,550.00, is due on the first day of each month. The Agent holds a security deposit of \$775.00.

The Agent testified that he served the Notice by mailing it to the rental unit on August 11, 2017. The Agent provided a copy of the express post mail receipt as proof of mailing. The amount owing at that time was \$3,300.00. Further, the Agent stated that the Tenant has not paid any rent since June of 2017. The Agent testified that the Tenant owes rent as follows:

Year	Month	Rent Due	Rent Paid	Rent Outstanding
2017	Outstanding at the end of June			\$200.00
	July	\$1,550.00	\$0.00	\$1,750.00
	August	\$1,550.00	\$0.00	\$3,300.00
	September	\$1,550.00	\$0.00	\$3,850.00
	October	\$1,550.00	\$0.00	\$5,400.00
Total Accrued Balance				\$5,400.00

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 owed \$3,300.00 in past due rent at the time the Notice was issued. The landlord issued and served the Notice by mailing it to the rental unit on August 11, 2017, and I find the tenant received the Notice on August 16, 2017, 5 days after it was mailed, pursuant to section 90 of the *Act*.

The tenant had 5 days to pay rent in full or file an application for dispute resolution. I find there is 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 Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenant.

Next, I turn to the Agent's request for a Monetary Order for unpaid rent. After considering the evidence before me, as summarized in the chart above, I find there is sufficient evidence before me to demonstrate that the tenant owes and has failed to pay \$5,400.00 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 **\$5,400.00**. 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 20, 2017

Residential Tenancy Branch