



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on October 20, 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; and,
- to recover the filing fee from the tenant for the cost of this application.

The Landlord's agent and the Tenant both attended the hearing and provided affirmed testimony. Neither party raised any issues with respect to service of the Application Package or the documentary evidence.

Both parties were 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.

The Agent is requesting to amend her application to include rent that has accrued since the original application date (for 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 her application to include rent that has accrued since the original application date.

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?
3. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The agent testified that monthly rent is \$1,102.00, and is due on the first of the month. The agent stated that she does not hold a security deposit.

The Agent testified that she served the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) by mailing it to the rental unit on August 9, 2017. The amount owing at that time was \$2,185.00. The Agent provided oral testimony and documentary evidence with respect to rent payments and accruals. This evidence is summarized as follows:

Date	Item	Amount Due	Amount Paid	Accrued Balance Owing
July 1, 2017	Rent Due	\$1,102.00	\$19.00	\$1,083.00
August 1, 2017	Rent Due	\$1,102.00	\$0.00	\$2,185.00
August 21, 2017	Rent Payment		\$320.00	\$1,865.00
September 1, 2017	Rent Due	\$1,102.00	\$0.00	\$2,967.00

September 5, 2017	Rent Payment	\$457.00	\$2,510.00
September 18, 2017	Rent Payment	\$320.00	\$2,190.00
September 29, 2017	Rent Payment	\$457.00	\$1,733.00
October 1, 2017	Rent Due	\$1,102.00	\$0.00
Total Accrued Balance			\$2,835.00

The tenant was provided the opportunity to present evidence and to respond to the above information from the agent. He did not dispute any of the above amounts of dates with respect to payments. The tenant confirmed that he got the Notice but was not sure when he got it.

Analysis

Based on the 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 \$2,185.00 in past due rent at the time the Notice was issued on August 9, 2017. The landlord issued the Notice by mailing it to the rental unit on August 9, 2017, and I find the tenant received Notice on August 14, 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. Although the tenant made a partial payment on August 21, 2017, I note this was not payment in full, and only covered part of the balance owing. 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 24, 2017. 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 \$2,835.00 in past due rent.

Further, 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 successful in this hearing, I also order the tenant to repay the \$100.00 fee the agent paid to make the application for dispute resolution. In summary, I find the agent is entitled to a monetary order in the amount of \$2,935.00.

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 **\$2,935.00**. 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