



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding Select Real Estate Property Management Division
and [tenant name suppressed to protect privacy]

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, via teleconference, on December 5, 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 she sent a copy of the Notice of Hearing along with supporting documentary evidence to the Tenant on October 10, 2017, by registered mail. I find the Tenant received this package on October 15, 2017, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The Agent has requested to amend her application to include rent that has accrued since the original application date, up until the end of November 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 as specified above.

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 \$800.00, is due on the first day of each month. The Agent testified that no rent has been paid by the Tenant for August 2017 through to the date of this hearing.

The Agent testified that she served the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by posting it to the door of the rental unit on August 14, 2017. The amount owing at that time was \$800.00. Service of this document was witnessed by a third party. The Agent stated that the Tenant attended her office after they served the 10 Day Notice to him, and he stated that he intended to pay, and that he would return in the near future with the money that he owed. The Agent stated that the Tenant never did return to pay, even though he was told all the methods of payment available to him. The Agent testified that they are not looking to collect December rent and just want an order of possession right away if possible.

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. I find no evidence the Tenant had a right under the *Act* to withhold 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 \$800.00 in past due rent at the time the 10 Day Notice was issued on August 14, 2017. The 10 Day Notice was issued by posting it to the door of the rental unit on August 14, 2017, and I find the tenant received the 10 Day Notice on August 17, 2017, 3 days after it was posted, pursuant to section 90 of the *Act*.

The tenant had 5 days to pay rent in full or file an application for dispute resolution. 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, August 27, 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, I find there is sufficient evidence before me to demonstrate that the Tenant owes and has failed to pay \$800.00 in monthly rent for August, September, October, and November of 2017. The Agent stated they are going after December 2017 rent, and just want an order of possession as soon as possible. As such, I award to Landlord a monetary order in the amount of \$3,200.00 (4x \$800.00) for unpaid rent up to and including the end of November 2017.

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 **\$3,200** 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: December 05, 2017

Residential Tenancy Branch