



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMI REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR MNR

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act") to obtain an order of possession for unpaid rent or utilities and for a monetary order for unpaid rent or utilities.

This application began as a landlord's application via the Direct Request process which was adjourned to a participatory hearing based on the Interim Decision dated November 22, 2017, which should be read in conjunction with this decision.

An agent for the landlord ("agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail on November 27, 2017. A registered mail tracking number was provided orally and has been included on the cover page of this decision for ease of reference. The agent stated that the registered mail package was addressed to the tenant and mailed to the rental unit address and was eventually returned as unclaimed. The landlord stated that at the time of mailing the tenant was still residing in the rental unit. Section 90 of the *Act* indicates that documents served by registered mail are deemed served five days after they are mailed. Therefore, pursuant to section 90 of the *Act* and based on the undisputed evidence before me, I find that the tenant was sufficiently served as of December 2, 2017. As a result, the hearing continued without the tenant present. As the tenant did not attend the hearing, I find that this application is undisputed and unopposed by the tenant.

Preliminary and Procedural Matters

During the hearing, the agent requested to include loss of December 2017 rent as the tenant continued to occupy the rental unit into December. The agent was advised that I find that such a claim does not prejudice the tenant as the tenant would know or ought to know that by occupying the rental unit into December 2017 when rent is due on the first day of each month that a loss of rent would occur. Therefore, pursuant to section 64(3) of the *Act* I allow the landlord's increased monetary claim.

In addition to the above, during the hearing the agent requested to offset the tenant's security deposit which I advised the agent I was authorized to do pursuant to sections 67 and 72 of the *Act*.

The agent confirmed the two email addresses for the landlord during the hearing and the agent was advised that a copy of the decision and any applicable orders would be emailed to the landlord and would be sent by regular mail to the tenant.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on June 15, 2015. Monthly rent in the amount of \$1,188.00 was due on the first day of each month. The tenant paid a security deposit of \$594.00 at the start of the tenancy which the landlord continues to hold.

The landlord confirmed service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 5, 2017 ("10 Day Notice") by posting to the tenant's door on November 5, 2017. The 10 Day Notice included an effective vacancy date of November 15, 2017 which would automatically correct to November 18, 2017 under section 53 of the *Act* as documents posted to a tenant's door are deemed served three days after they are posted. The agent confirmed that the 10 Day Notice indicates that \$1,188.00 was owed as of November 1, 2017. According to the agent, the tenant did not dispute the 10 Day Notice and did not pay any of the rent owed within five days of receiving the 10 Day Notice or since. The agent testified that he is not certain that the tenant has vacated the rental unit as of the date of the hearing, and is seeking an order of possession in case he has not vacated the rental unit.

Analysis

Based on the undisputed documentary evidence and unopposed testimony provided by the agent during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenant failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after being deemed served with the 10 Day Notice. The effective vacancy date of the 10 Day Notice is listed as November 15, 2017 which automatically corrects under section 53 of the *Act* to November 18, 2017. I find the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the corrected effective vacancy date of the 10 Day Notice, which was November 18, 2017. According to the agent, the tenant likely continues to occupy the rental unit. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

Claim for unpaid rent and loss of rent –The landlord testified that the tenant failed to pay \$1,188.00 for November 2017 rent and that the landlord has suffered a loss of \$1,188.00 in rent for December 2017 as of the date of the hearing. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$2,376.00** comprised of unpaid rent for November 2017 and loss of rent for December 2017.

The landlord is holding the tenant's security deposit of \$594.00 which was paid by the tenant at the start of the tenancy and has accrued no interest. As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**.

Monetary Order – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit plus \$0.00 in interest as follows:

1. Unpaid November 2017 rent	\$1,188.00
2. Loss of December 2017 rent	\$1,188.00
3. Recovery of the cost of the filing fee	\$100.00
Subtotal	\$2,476.00
<i>(Less tenant's security deposit including \$0.00 interest)</i>	<i>-(\$594.00)</i>
TOTAL BALANCE OWING BY TENANT TO LANDLORD	\$1,882.00

Given the above, and pursuant to sections 67 and 72 of the *Act*, I authorize the landlord to retain the tenant's full security deposit and \$0.00 in interest which totals \$594.00 from the \$2,476.00 owing by the tenant to the landlord in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order for the balance owing by the tenant to the landlord in the amount of **\$1,882.00**.

Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$2,476.00 as indicated above. The landlord is authorized to retain the tenant's full security deposit including \$0.00 in interest which totals \$594.00 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of \$1,882.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 27, 2017

Residential Tenancy Branch