



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 by Direct Request, which was referred to a participatory hearing (the "Application"). The Landlord sought 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 Landlords were represented at the hearing by S.S. The Tenant attended the hearing on her own behalf. Both S.S. and the Tenant provided a solemn affirmation at the beginning of the hearing.

The Landlord testified the Application package was served on the Tenant by registered mail. The Tenant acknowledged receipt. Pursuant to section 71 of the *Act*, I find the Tenant was sufficiently served with the Application package for the purposes of the *Act*. The Tenant did not submit documentary evidence in response to the Application.

No issues were raised with respect to service or receipt of the above documents. The parties were given a full opportunity to present their evidence orally and in documentary form prior to the hearing, and 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.

Background and Evidence

The parties agreed the current fixed-term tenancy began on May 1, 2017, and was expected to end on April 30, 2018. Rent in the amount of \$1,400.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$675.00, which the Landlord holds.

On behalf of the Landlords, S.S. testified that rent was not paid when due on October 1, November 1, December 1, 2017, and January 1, 2018. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 2, 2018 (the "10 Day Notice"), which was served on the Tenant by leaving a copy attached to the door of the rental unit. At that time, rent in the amount of \$4,250.00 was outstanding, as follows:

Rent due date	Rent due	Rent paid	Rent outstanding
Oct 1, 2017	\$1,400.00	\$1,350.00	\$50.00
Nov 1, 2017	\$1,400.00	\$0	\$1,400.00
Dec 1, 2017	\$1,400.00	\$0	\$1,400.00
Jan 1, 2018	\$1,400.00	\$0	\$1,400.00
OUTSTANDING:			\$4,250.00

In addition, rent in the amount of \$1,400.00 also became due on February 1, 2018. The total rent at issue is \$5,650.00. However, the Landlord confirmed the Tenant has made a number of partial payments since receiving the 10 Day Notice, as follows:

Partial payment date	Partial payment amount
January 23, 2018	\$1,150.00
February 1, 2018	\$500.00
February 10, 2018	\$800.00
February 13, 2018	\$875.00
PARTIAL PAYMENTS:	\$3,325.00

Accordingly, rent in the amount of \$2,325.00 (\$5,650.00 - \$3,325.00) remains outstanding.

In reply, the Tenant did not dispute that rent is outstanding as claimed by the Landlord. She works on commission and has been unable to make ends meet.

Analysis

Based on the affirmed oral testimony and the documentary evidence submitted by the parties, and on a balance of probabilities, I find:

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 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 and wishes to dispute it has five days to either pay rent or file an application for dispute resolution. When a tenant does not pay rent or file an application for dispute resolution, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In this case, the Landlord testified, and I find, that the Tenant did not pay rent when due. Accordingly, the Landlord served the Tenant with the 10 Day Notice on January 2, 2018, by posting a copy to the door of the rental unit. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received three days later. I find that the 10 Day Notice is deemed to have been received on January 5, 2018.

As noted above, a tenant has five days after receiving a notice to end tenancy for unpaid rent to either pay rent or make an application for dispute resolution. In this case, the Tenant has done neither. Accordingly, the Tenant is conclusively presumed to have accepted the end of the tenancy. As a result, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

The Landlord testified that rent in the amount of \$2,325.00 remains outstanding. The Tenant did not dispute this amount. Accordingly, I find the Landlord is entitled to a monetary award of \$2,325.00 for unpaid rent.

Having been successful, I find the Landlord is also entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$2,425.00, which is comprised of \$2,325.00 for unpaid rent and \$100.00 for recovery of the filing fee.

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service upon the Tenant. This Order may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$2,425.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: February 20, 2018

Residential Tenancy Branch