



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The landlords attended the hearing via conference call and provided undisputed affirmed testimony. The tenant attended and confirmed he did not submit any documentary evidence. Both parties confirmed that the landlords served the tenant with the notice of a reconvened hearing package in person on December 6, 2017. The landlords provided a signed acknowledgment dated December 6, 2017 as confirmation. The landlords also stated that the amendment to the application increasing the monetary claim was served to the tenant via Canada Post Registered Mail on December 18, 2017. The landlord provided the Canada Post Customer Receipt Tracking number in their direct testimony as confirmation of service. No issues with service were made by either party. I accept the undisputed affirmed evidence of both parties and find that both parties were properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on October 15, 2017 on a fixed term tenancy until September 14, 2018 as shown by the submitted copy of the signed tenancy agreement dated October 14, 2017. Monthly rent is \$1,600.00. A security deposit of \$800.00 was paid on October 16, 2017.

The landlords stated that the monthly rent was due on the 1st day of each month. The tenant argued that monthly rent was due bi-monthly on the 2nd and the 16th day of each month. Although the landlords claimed that rent was due on the 1st day of each month, during the hearing the landlords provided undisputed affirmed testimony that they agreed to allow the tenant to pay rent bi-monthly to coincide with his pay periods. As such, I find that I prefer the evidence of the tenant over that of the landlord regarding when rent is due. I find that the monthly rent of \$1,600.00 is payable on the 2nd and the 16th day of each month.

As the monthly rent has been found to be due on the 2nd and 16th days of the month, I find that the 10 day notice is incorrect. However, the tenant has acknowledged at the outset that rent is in arrears. I find that the landlords are entitled to seek an end to the tenancy based upon the 10 Day Notice dated November 7, 2017.

The landlords stated that the tenant was served with a 10 Day Notice to End Tenancy issued for Unpaid Rent (the 10 Day Notice) dated November 7, 2017 by placing it in the mailbox of the rental unit on November 17, 2017 with a witness. It states that the tenant failed to pay rent of \$1,600.00 that was due on November 1, 2017 and sets out an effective end of tenancy date of November 17, 2017.

I find based upon the service date of November 17, 2017 of the 10 Day Notice that the effective end of tenancy date is corrected to November 27, 2017.

The tenant confirmed receipt of the 10 Day Notice dated November 7, 2017 as claimed by the landlords.

The landlords seek an order of possession and a monetary order for unpaid rent of \$5,400.00 which consists of:

\$600.00	Unpaid Rent, November 2017
\$1,600.00	Unpaid Rent, December 2017
\$1,600.00	Unpaid Rent, January 2018
\$1,600.00	Unpaid Rent, February 2018

The tenant argues that he paid all of the November 2017 rent of \$1,600.00 and that \$1,000.00 was paid toward December 2017 rent but was unable to provide any proof of payment. The tenant confirmed in his direct testimony that no rent has been paid for January and February of 2018.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, I accept the undisputed affirmed testimony that the landlords served the tenant with the 10 Day Notice dated November 7, 2017 on November 17, 2017 by placing it in the mailbox.

The tenant acknowledged that rent was in arrears and that it was not paid when due. Although the tenant has argued that rent was eventually paid for November 2017 as opposed to a \$1,000.00 payment confirmed received by the landlord at the end of November 2017, the tenant has failed to provide sufficient evidence of rent paid. As such, I find that the landlord is entitled to an order of possession pursuant to section 46 (5) of the Act.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by November 27, 2017. As that has not occurred, I find that the landlords are entitled to a two-day order of possession.

As for the monetary claim, I find on a balance of probabilities that I prefer the evidence of the landlords over that of the tenant. The tenant was unable to provide sufficient evidence that rent of \$1,600.00 was paid for November 2017 and \$1,000.00 was paid for December 2017. The tenant confirmed in his direct testimony that no rent was paid

for January and February of 2018. On this basis, I find that the landlord has established a claim as filed for \$5,400.00 in unpaid rent.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlords are granted an order of possession.

The landlords are granted a monetary order for \$5,500.00.

These orders must be served upon the tenant. Should the tenant fail to comply with the orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those courts.

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 21, 2018

Residential Tenancy Branch