



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR; FFL

Introduction

I was assigned responsibility for conducting a participatory hearing of the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*). An adjudicator appointed under the *Act* adjourned the landlord's application to a participatory hearing in an Interim Decision of March 13, 2018. The landlord applied for:

- an Order of Possession based on a 10 Day Notice to End Tenancy (the 10 Day Notice) pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:20 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave undisputed sworn testimony that they posted the 10 Day Notice on the tenant's door at 11:26 a.m. on February 2, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with this Notice on February 5, 2018, the third day after it's posting.

The landlord gave undisputed sworn testimony and written evidence that they sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on March 14, 2018. They provided a copy of the Canada Post Tracking Number to confirm this registered mailing. The landlord also testified that she had checked Canada Post's online tracking system and confirmed that the dispute resolution hearing package was successfully delivered to the tenant. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with this dispute resolution hearing package on March 19, 2018, the fifth day after its registered mailing.

At the hearing, the landlord reduced the amount of the requested monetary award from \$1,684.10, the amount identified on the landlord's application, to \$724.85, the amount currently owing. I have lowered the amount of the landlord's requested monetary award to \$724.85, as per the landlord's request at this hearing, plus \$100.00 for the recovery of the landlord's filing fee for this application.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began as a month-to-month tenancy on October 28, 2011. The initial rent of \$725.00, was payable in advance by the first of each month. This amount was increased during the course of this tenancy; however, the landlord's representative testified that the property owner agreed to reduce the monthly rent as of April 2018 to \$700.00. The landlord continues to hold the tenant's \$365.00 security deposit paid on October 27, 2011.

The landlord's original application for a monetary award of \$892.10 was outlined as follows in the landlord's direct request monetary worksheet:

Item	Amount
Unpaid Rent Owing for December 2017	\$2.10
Unpaid Rent Owing for January 2018	96.00
Unpaid Rent Owing for February 2018	794.00
Total of Above Amounts	\$892.10

The landlord's increased written request for a monetary award included unpaid rent that became owing for March 2018.

The landlord testified that the tenant had made a number of payments, accepted by the landlord for use and occupancy only, since the landlord applied for dispute resolution. The landlord said that the tenant continues to owe \$724.85 as of the date of this hearing. The landlord said that most of this amount was for unpaid rent of \$700.00 for April 2018. The landlord gave undisputed sworn testimony that the only amounts owing at this time are as follows:

Item	Amount
Unpaid April 2018 Rent plus late fee (\$700.00 + \$25.00 = \$725.00)	\$725.00
Less Tenant's Credit prior to April 1, 2018	-0.15

Total Monetary Award Requested	\$724.85
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Analysis

The tenant failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by February 15, 2018. I find that the landlord's acceptance of payments from the tenant for use and occupancy only has not extended this tenancy beyond March 31, 2018, the last date for which the tenant has made payments to the landlord. I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent."

In this case, there is undisputed evidence that the tenant has not paid a total of \$724.85, which remains owing as of the date of this hearing. Under these circumstances, I allow the landlord's application for a monetary award of \$724.85, for unpaid rent owing as of the date of this hearing.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order under the following terms, which allows the landlord to recover unpaid rent owing and the filing fee for this application and to retain the tenant's security deposit:

Item	Amount
Unpaid Rent Owing as of April 5, 2018	\$724.85
Less Security Deposit	-365.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$459.85

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: April 05, 2018

Residential Tenancy Branch