



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KAIEN SENIOR CITIZENS HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL

Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:48 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 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 supported by witnessed written evidence that the landlord placed the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) in the tenant's mail slot on March 2, 2018. I find that the tenant was deemed served with this Notice in accordance with sections 88 and 90 of the *Act* on March 5, 2018, the third day after its placement in the tenant's mail slot.

The landlord gave sworn testimony that the landlord sent the tenant a copy of the landlord's dispute resolution and written evidence packages by registered mail on March 13, 2018. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. The landlord also testified that Canada Post's Online Tracking System confirmed that this registered mailing was successfully delivered to the tenant. I find that the tenant was deemed served with these documents in accordance with sections 88, 89 and 90 of the *Act* on March 18, 2018.

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?

Background and Evidence

This periodic tenancy for a rental unit in a senior citizen's facility commenced on November 15, 2002. Initial monthly rent was set at \$285.00, payable in advance on the first of each month. The landlord said that the current monthly rent is \$340.00. No security deposit was paid for this tenancy.

The landlord's application for a monetary award of \$650.00 included \$310.00 for unpaid rent owing from February 2018, and an additional \$340.00 for March 2018. Although the landlord testified that the tenant has not paid rent for April 2018, the landlord did not request an amendment of the monetary award for the additional \$340.00 that became owing as of April 1, 2018.

The landlord testified that the tenant has not paid anything towards the \$650.00 identified as owing on the 10 Day Notice since receiving that Notice. The landlord also entered into written evidence a series of letters sent to the tenant advising the tenant of the amounts owing and of the landlord's intention to pursue an end to this tenancy for unpaid rent unless the tenant paid outstanding rent to the landlord.

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 corrected effective date of the notice. In this case, this required the tenant to vacate the premises by March 15, 2018. As that has not occurred, 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 anything towards their rent since the 10 Day Notice was issued. Under these circumstances, I allow the landlord's application for a monetary award of \$650.00, for unpaid rent owing for February and March 2018.

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 for this tenancy

Item	Amount
Unpaid February 2018 Rent	\$310.00
Unpaid March 2018 Rent	340.00
Total Monetary Order	\$650.00

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 06, 2018

Residential Tenancy Branch