



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BONAVIDA MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Preliminary matter

This hearing is a result of an application by the Landlord under the Direct Request Process. That process is an Ex Parte proceeding that requires specific paper submissions. In this situation the Proof of Service document for the Notice to End Tenancy was not completed correctly therefore the application was adjourned to this participatory hearing.

Introduction

This matter dealt with an application by the Landlord to end the tenancy, for an Order of Possession, for a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery on February 28, 2018. The Tenant confirmed receiving the hearing package. Based on the evidence of the Landlord and Tenant, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties represented.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?

Background and Evidence

This tenancy started on September 1, 2016 as a 1 year fixed term tenancy with an expiry date of August 31, 2017 and then continued as a month to month tenancy. Rent is \$840.00 per

month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$405.00 on August 23, 2016.

The Landlord said that the Tenant did not pay \$840.00 of rent for February 2018 when it was due and as a result, on February 6, 2018 she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated February 6, 2018 on the door of the Tenant's rental unit. The Landlord said the Tenant has unpaid rent for March and April 2018 in the amount of \$840.00 for each month. The Landlord said the total unpaid rent is \$2,520.00.

The Landlord further indicated that the Tenant is living at the rental unit and the Tenant has told the Landlord that he was moving out, but the Landlord said the Tenant did not move out. The Landlord said they want to end the tenancy as soon as possible.

The Landlord also requested to recover the \$100.00 filing fee for this proceeding.

The Tenant said he did not apply to dispute the 10 Day Notice to End Tenancy and he agrees he has unpaid rent for February, March, April, 2018 in the amount of \$840.00 for each month. The Tenant said he hopes to make an agreement with the Landlord to continue the tenancy and make an arrangement to pay the unpaid rent.

The Landlord said they are not interested in continuing the tenancy because the Tenant has received a number of other 10 Day Notices for Unpaid Rent and the Tenant had ample opportunity to correct this situation and he did not. The Landlord said they want to end the tenancy as soon as possible.

The Tenant said he understands, but this situation resulted because the Tenant was having a difficult time both at work and with his health.

The Landlord said they want to end the tenancy by this Friday.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or on February 9, 2018. Consequently, the Tenant would have had to

pay the amount stated on the Notice or apply to dispute that amount no later than February 14, 2018.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent for February, March and April 2018, in the amount of \$2,520.00.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$2,520.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$2,620.00
Less:	Security Deposit	\$405.00	
	Subtotal:		\$ 405.00
	Balance Owing		\$2,215.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$2,215.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 09, 2018

Residential Tenancy Branch