



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held on April 3, 2018. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a 10 Day Notice to End Tenancy for unpaid rent or utilities (the Notice); and,
- a monetary order for unpaid rent or utilities.

The Landlord attended the hearing and provided testimony. The Tenant did not attend the hearing. The Landlord testified that he sent the application package/Notice of Hearing, along with his supporting evidence to the Tenant on February 5, 2018, by registered mail. I find the Tenant is deemed to have received this package on February 10, 2018, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The Landlord has requested to amend his application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

Further, the Landlord requested to amend his application to allow him to retain the security deposit to offset rent owed. In consideration of these requests, I hereby amend the Landlord's application accordingly.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to 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.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord authorized to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
4. Is the Landlord entitled to recover the filing fee from the Tenant for the cost of this application?

Background and Evidence

The Landlord testified that monthly rent is \$800.00 and is due on the first of the month. The Landlord holds a security deposit of \$400.00.

The Landlord provided a copy of the Notice which he stated was hand delivered to the Tenant on December 6, 2017. The Notice specified that the Tenant owed \$4,000.00 in rent at that time. The Landlord testified that no rent has been paid by the Tenant since July 2017.

The Landlord specified that the Tenant owes rent in the amount of \$800.00 per month for August 2017 through till April 2018, totalling 9 months and \$7,200.00.

Analysis

Based on the unchallenged testimony and documentary evidence, and on a balance of probabilities, I find as follows:

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(1) 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 under this section has five days after receipt, under section 46(4) of the *Act*, to either

pay rent in full or dispute the notice by filing an application for dispute resolution. When a Tenant does not pay rent in full or dispute the notice, the Tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the Tenant had a balance of unpaid rent at the time the Notice was issued. On December 6, 2017, the Notice was given to the Tenant in person; I find the Tenant received the Notice on this day.

The Tenant had 5 days to pay rent in full or file an application for dispute resolution. I find no evidence that the Tenant did either. As such, I find the Tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

With respect to the Landlord's request for a monetary order for unpaid rent, I find there is sufficient evidence from the Landlord's to demonstrate that the Tenant owes and has failed to pay any rent since July of 2017, bringing the outstanding amount to \$7,200.00, as summarized above.

The Landlord requested that they be able to retain the security deposit of \$400.00 to offset the amount of rent owed, and to recover the \$100 filing fee for this application.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the Tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order based on the following:

	Amount
Claim	
Cumulative unpaid rent	\$7,200.00
Other:	
Filing fee	\$100.00
Less:	
Security Deposit currently held by Landlord	(\$400.00)

TOTAL:	\$6,900.00
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Conclusion

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$6,900.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order 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 5, 2018

Residential Tenancy Branch