

## **DECISION**

Dispute Codes

OPR MNR

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application for:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities; and
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent, and for money owed for damage or loss under the *Act*.

While the landlord, S.N., attended the hearing by way of conference call, the tenant, did not. The landlord 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 a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was posted on the door of the rental unit on January 15, 2018. I find that in accordance with sections 88 and 90 of the *Act* the 10 Day Notice was deemed to have been served on the tenant on January 18, 2018, three days after its posting.

The landlord testified that the tenant was sent the Landlord's Application for Dispute Resolution hearing package ("dispute resolution hearing package") and evidence by way of Registered Mail on February 14, 2018. The Canada Post tracking number and receipt were provided for the hearing. In accordance with sections 89 and 90 of the *Act*, I find the tenant deemed to be served with the landlord's dispute resolution hearing package and evidence on February 19, 2018, five days after their mailing.

Following opening remarks, the landlord asked if he could amend his Monetary Order to represent unpaid rent for February, March and April 2018. The landlord stated that the tenant was provided with a 10 Day Notice to End Tenancy in January 2018, that no rent has been paid since its issuance and that the tenant continues to reside in the property. Pursuant to section 63 of the *Act*, I amend the landlord's Monetary Order to reflect unpaid rent of \$590.00 per month for February, March and April 2018.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

### Background and Evidence

The landlord provided undisputed testimony that the tenancy in question began on April 1, 2013. Rent was \$595.00 per month, and a security deposit of \$297.50 collected at the outset of the tenancy, continues to be held by the landlord.

The landlord has applied for an Order of Possession and a Monetary Order for non-payment of rent for the months of November & December 2017, along with January 2018. The landlord said that the tenant refused to answer his door and would not acknowledge the 10 Day Notice which the landlord had posted on the tenant's door. The landlord is seeking a monetary order of \$3,570.00 for unpaid rent associated with the tenancy. Specifically the landlord seeks the following:

Item	Amount
Unpaid rent for November 2017	\$595.00
Unpaid rent for December 2017	595.00
Unpaid rent for January 2018	595.00
Unpaid rent for February 2018	595.00
Unpaid rent for March 2018	595.00
Unpaid rent for April 2018	595.00
Total =	\$3,570.00

### Analysis

The tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. 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 her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by January 28, 2018, the corrected effective day of the 10 Day Notice. 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.

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 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. The landlord provided undisputed oral testimony and written evidence was submitted with the hearing package demonstrating that rent has not been paid for November and December 2017, along with January, February, March and April 2018.

Pursuant to section 67 of the *Act* and based on the landlord's uncontested evidence, I find that the landlord is entitled to a monetary award of \$3,570.00 related to unpaid rent.

While the landlord has not applied for it, using the offsetting provisions contained in section 72 of the *Act*, the landlord may retain the tenant's security deposit in partial satisfaction of the monetary award.

### Conclusion

I am granting the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I am making a Monetary Order of \$3,272.50 in favour of the landlord as follows:

Item	Amount
Unpaid rent for November 2017	\$595.00
Unpaid rent for December 2017	595.00
Unpaid rent for January 2018	595.00
Unpaid rent for February 2018	595.00
Unpaid rent for March 2018	595.00
Unpaid rent for April 2018	595.00
Less Security Deposit	(-297.50)
Total =	\$3,272.50

The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial 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 4, 2018

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Residential Tenancy Branch