



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S

Introduction

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

- an Order to end the tenancy early, pursuant to section 56.

The landlord's amended application removes the request to end the tenancy early and seeks the following:

- a monetary Order of \$6,600.00 for unpaid rent, from February to April 2018, pursuant to sections 26 and 67 of the *Act*;
- an Order of possession for unpaid rent pursuant to sections 46 and 55 of the *Act*, and
- authority to retain the tenant's security deposit in the amount of \$1,000.00 pursuant to section 72 of the *Act*.

Both parties agreed that the original dispute resolution package regarding the early end to tenancy was not served on the tenants.

The landlord testified that he served the tenant the amended notice of dispute resolution package by registered mail on March 19, 2018. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. The tenant confirmed receipt of the dispute resolution package but could not confirm the date of receipt. I find that the tenant was deemed served with this package on March 24, 2018, 5 days after its mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

- Is the landlord entitled to an Order of possession, pursuant to sections 46 and 55 of the *Act*?
- Is the landlord entitled to a monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
- Is the landlord entitled to retain the tenant's \$1,000.00 security deposit pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in 2015 and is currently ongoing. Monthly rent in the amount of \$2,200.00 is payable on the first day of each month. A security deposit of \$1,000.00 was paid by the tenant to the landlord.

The tenant testified that in addition to the \$1,000.00 security deposit, he also paid a \$500.00 pet deposit. The landlord disagreed and stated that a pet deposit was never paid by the tenant. Only the first two pages of a written tenancy agreement were entered into evidence by the landlord; the section on deposits and the signature page were not provided. The landlord requested he be permitted to retain the \$1,000.00 security deposit as partial satisfaction for his monetary claim.

Both parties agreed that from February 2018 to April 2018 the tenant did not pay rent. On February 18, 2018, the landlord personally served a 10 Day Notice to End Tenancy (the "10 Day Notice") on the tenant effective February 18, 2018. The 10 Day Notice states that the tenant was served on February 8, 2018 but this is inaccurate. The landlord testified that February 8, 2018 was the date the 10 Day Notice was filled out but the tenant was not served until February 18, 2018. The tenant confirmed that he was served with the 10 Day Notice on February 18, 2018.

The tenant testified that he did not pay rent because in the beginning of January 2018 the gas furnace stopped working leaving him without heat and hot water. The tenant testified that he reported this to the landlord and while the landlord sent out a few repair people, the problem did not get fixed until February 1, 2018. This left the tenant without heat and hot water for the month of January 2018.

Analysis

As both parties testified that the landlord personally served the 10 Day Notice on the tenant on February 18, 2018, I find that the tenant was served with the 10 Day Notice on February 18, 2018 in accordance with sections 88 and 90 of the *Act*.

The tenant failed to pay the February 2018 rent within five days of receiving the 10 Day Notice. The tenant has not made an 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 his tenancy on the corrected effective date of February 28, 2018. Section 53 of the *Act* allows a notice to end tenancy that has an incorrect effective date be self-correct to the correct date.

In this case, this required the tenant to vacate the premises by February 28, 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 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the tenant was obligated to pay the monthly rent in the amount of \$2,200.00 on the first day of each month from February to April 2018 which he failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$6,600.00 in unpaid rent.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$1,000.00 in part satisfaction of their monetary claim for unpaid rent against the tenant. I decline to make any finding regarding the alleged \$500.00 pet deposit paid by the tenant to the landlord as neither party submitted a complete tenancy agreement.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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.

Pursuant to section 67 and 72 of the *Act*, I issue a monetary Order under the following terms, which allows the landlord to recover damages for unpaid rent and the filing fee for this application:

Item	Amount
February 2018 Rent	\$2,200.00
March 2018 Rent	\$2,200.00
April 2018 Rent	\$2,200.00
Less security deposit	-\$1,000.00
Total	\$5,600.00

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 30, 2018

Residential Tenancy Branch