



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. The participatory hearing was held on May 2, 2018. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The Landlord attended the hearing and brought with her two Agents, collectively referred to as the "Landlord". The Tenant did not attend the hearing.

The Landlord testified that they sent a copy of the Notice of Hearing along with supporting documentary evidence to the Tenant on February 19, 2018, by registered mail. I find the Tenant received this package on February 24, 2018, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The Landlord also sent additional evidence to the Tenant, by registered mail, on April 16, 2018. I find the Tenant received this package on April 21, 2018, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*. However, Residential Tenancy Branch Rule of Procedure 3.14 requires that evidence to be relied upon at a hearing must be received by the Residential Tenancy Branch and the respondent not less than 14 days before the hearing. Since the evidence is late and was not properly disclosed to the Tenant, I will not consider the Landlord's late documentary evidence in this hearing. In this review I will only consider testimony from the hearing as well as evidence from the first evidence package from the Landlord.

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.

Issues 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?

Background and Evidence

During the hearing, the Landlord stated that they are looking to end the tenancy because they cannot afford to keep giving the Tenant time to pay. The Landlord also stated that he is looking to recover \$2,399.00 in unpaid rent as well as \$100.00 for the filing fee.

The Landlord testified that rent, in the amount of \$1,600.00, is due on the first day of each month. The Landlord holds a security deposit of \$450.00.

The Landlord testified that he sent the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) to the Tenant by registered mail on February 2, 2018. The amount owing at that time was \$2,184.00. The Landlord provided the tracking number for this package.

The Landlord provided a verbal account, as well as an account ledger showing that the Tenant has been continually behind on rent payments over the last 2 years. The Landlord stated that they cannot afford to keep allowing the Tenant time to catch up with her rent payments. The Landlord stated that the Tenant owed \$2,184.00, at the time the Notice was issued. The Landlord provided a detailed ledger showing how this amount was calculated.

The Landlord stated that after giving the Tenant the Notice, they did not get any rent payments until March 7, 2018, when she paid \$840.00. The Tenant paid another \$1,745.00 on March 27, 2018. However, the Landlord stated that \$1,199.00 was still outstanding as of the end of March 2018. Then, in April 2018, rent was payable on the first of the month, but the Landlord did not get any payments until \$1,400.00 was paid on April 26, 2018, and \$600.00 on April 27, 2018. This left a balance of \$799.00 as of

the end of April 2018, and no rent was paid for May 2018. The Landlord stated that as of the time of this hearing, a total of \$2,399.00 worth of unpaid rent still remains outstanding. The Landlord is seeking an order of possession for the end of May 2018.

Analysis

Based on the unchallenged affirmed 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, under section 46(4) of the *Act*, after receipt 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 owed \$2,184.00 in past due rent at the time the Notice was issued on February 2, 2018. The Landlord sent the Notice by registered mail on February 2, 2018. I find the Tenant received the Notice on February 7, 2018, 5 days after it was mailed, pursuant to section 90 of the *Act*.

The Tenant had 5 days to pay rent in full or file an application for dispute resolution. Although the Tenant made partial payments a month later, I note it was not payment in full and was not within the 5 days allowable under the *Act*. 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 May 31, 2018, and after service on the Tenant.

Next, I turn to the Landlord's request for a Monetary Order for unpaid rent. After considering the evidence before me, as summarized above, I find there is sufficient evidence before me to demonstrate that the Tenant owes and has failed to pay \$2,399.00 in past due rent. This amount includes the period up to and including the end of May 2018.

Further, 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 successful in this hearing, I

also order the Tenant to repay the \$100.00 fee the Landlord paid to make the application for dispute resolution.

Conclusion

The Landlord is granted an order of possession effective **May 31, 2018**, at 1:00 p.m. 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 **\$2,499.00**. 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: May 3, 2018

Residential Tenancy Branch