



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BELMONT PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM, MNR

Introduction

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

- a monetary Order for unpaid rent pursuant to sections 26 and 67 of the *Act*; and
- an Order of possession for unpaid rent pursuant to sections 46 and 55 of the *Act*.

The tenant did not attend this hearing, although I left the teleconference hearing connection open for 11 minutes in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. The landlord's building manager (the "landlord") and property manager attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's representatives and I were the only ones who had called into this teleconference.

The landlord testified that she served the tenant the notice of dispute resolution package by registered mail on May 2, 2018. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. I find that the tenant was deemed served with this package on May 7, 2018, 5 days after its mailing, in accordance with sections 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*?

Background and Evidence

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

The landlord testified that this tenancy began on February 1, 2003 but does not know if the tenant is still residing in the rental unit. The landlord testified that monthly rent in the amount of \$851.00 is payable on the first day of each month. A security deposit of \$305.00 was paid by the tenant to the landlord.

The landlord provided undisputed testimony that the tenant has not paid rent in the amount of \$851.00 per month for the months of March, April and May 2018. On April 13, 2018, the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") with an effective date of April 23, 2018, citing \$1,702.00 in unpaid rent for the months of March and April 2018, on the tenant's door.

Analysis

As the landlord provided undisputed testimony that she posted the 10 Day Notice on the tenant's door on April 13, 2018, I find that the tenant was served with the 10 Day Notice on April 16, 2018, three days after its posting, in accordance with sections 88 and 90 of the *Act*.

The tenant failed to pay 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 April 26, 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 April 26, 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. I find that the tenant was obligated to pay the monthly rent in the amount of \$851.00 on the first day of each month from March to May 2018 which he

failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$2,553.00 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 \$305.00 in part satisfaction of their monetary claim for unpaid rent against the tenant.

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:

Item	Amount
March 2018 rent	\$851.00
April 2018 rent	\$851.00
May 2018 rent	\$851.00
Less security deposit	-\$305.00
Total	\$2,248.00

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: June 7, 2018

Residential Tenancy Branch