



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SAHAR INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord requesting an Order of Possession due to unpaid rent, a monetary order for payment of rent arrears of \$324.00 and to retain the security deposit. The Landlord also requests an order for payment of the filing fee.

The Landlord’s agent and Tenant both appeared for the scheduled hearing.

The Tenant did indicate that he only heard about this hearing date about a week ago; the Landlord explained that he sent the Notice of Hearing and documents to the Tenant via registered mail on September 8, 2018 and he provided documentation to show the tracking numbers and receipt. Canada Post attempted several times to deliver the package to the Tenant, but it was eventually returned to the sender. The Landlord stated that he then took the information and handed it personally to the Tenant about a week ago although he did not have an exact date, and then contacted him the morning of the hearing to remind him to attend.

I find that the Landlord served the Tenant by registered mail in accordance with section 89 of the Act and that the Tenant did not accept service. Under section 90, service is **deemed** to have occurred on the 5th day after mailing, which would be September 13, 2018. I further find that the Tenant received notice of the hearing when he was personally served approximately one week prior to the hearing date, and that he was able to attend the hearing on the scheduled date to provide his response to the Landlord’s claim. I find that there is no prejudice to the Tenant and the hearing proceeded.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, call witnesses and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issues to be Decided

Is the Landlord entitled to an Order of Possession, pursuant to sections 46 and 55 of the Residential Tenancy Act ("Act")?

Is the Landlord entitled to a monetary order for payment of rent arrears, pursuant to section 67 of the Act?

Is the Landlord entitled to retain the security deposit, pursuant to section 38 of the Act?

Is the Landlord entitled to payment of the filing fee, pursuant to section 72 of the Act?

Background and Evidence

This tenancy began in 2015 as a verbal agreement when the Landlord was approached by Salvation Army to house the Tenant after a fire in the neighborhood. Rent was set at \$650.00 a month, later increasing to the current amount of \$674.00 a month, payable on the first of each month. The Landlord stated that the Tenant's portion of the monthly rent after the Salvation Army pays its share is \$324.00 per month. A security deposit of \$325.00 was paid. The details of the verbal tenancy agreement were not in dispute.

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The Landlord testified that the Tenant did not pay his portion of the August rent, prompting the Landlord to serve a 10-Day Notice to End Tenancy for Unpaid Rent to the Tenant by posting it on his door on August 9, 2018; a photograph and Proof of Service form was submitted into evidence.

The Notice to End Tenancy was signed August 9th and had a stated effective date of August 19, 2018. The Tenant did not dispute the notice and did not pay the rent arrears of \$324.00 owing for August until later. The Landlord states the payment was received September 21st, but the Tenant's recollection was that it was "8 or 9 days later".

The Tenant states he did not dispute the notice because the Landlord accepted his payment and he admits that the last couple of months his rent is being paid late. The Landlord states that he provided a receipt to the Tenant stating the late payments were accepted “for occupancy only”; the Tenant was unable to recall what the receipt stated. The Landlord submitted a copy of a receipt which states “occupancy only” dated October 1, 2018,

The Landlord asks for an Order of Possession at this time. There are currently arrears of \$324.00 owing by the Tenant for the month of October, which he states that he will try to pay shortly, but that his cheque had been sent out in the wrong person’s name. The Landlord is unwilling to give the Tenant more time to catch up payments and asks for a monetary order for the rent arrears and filing fee, and to retain the security deposit in partial satisfaction of the claim.

Analysis

A tenant is obligated to pay rent when it is due, pursuant to section 26 of the Act:

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

(2) *A landlord must provide a tenant with a receipt for rent paid in cash.*

...

Under section 46 of the Act, a landlord may end a tenancy with 10 days written notice for unpaid rent:

46 (1) *A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*

(2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*

*(4) **Within 5 days after receiving a notice** under this section, the tenant may*

*(a) **pay the overdue rent**, in which case the notice has no effect, or*

*(b) **dispute the notice** by making an application for dispute resolution.*

*(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), **the tenant***

***(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice**, and*

(b) must vacate the rental unit to which the notice relates by that date. {bolding added}

I have reviewed the Notice to End Tenancy and find that it complies with section 52 in form and in content; section 52 requires that the notice be in writing and be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, the grounds for terminating the tenancy and be in the approved form.

I find that the notice was served on the Tenant by posting it on the Tenant's door in accordance with section 89 of the Act on August 9, 2018 and that it is deemed served pursuant to section 90 on the third day, namely August 12, 2018. I further find that the Tenant failed to dispute the notice to end the tenancy or pay the arrears within five days (by August 17, 2018) as required under section 46. The effective date is auto-corrected to be August 22, 2018 pursuant to section 53 of the Act.

Accordingly, the Tenant is conclusively presumed to have accepted the notice to end the tenancy as of the corrected effective date of the notice. The Landlord is granted an Order of Possession.

I am also satisfied that the Landlord has proven ongoing rent arrears in the sum of \$324.00, which was admitted by the Tenant. I am prepared to allow the Landlord to retain the security deposit in partial satisfaction of the monetary order for these rent arrears.

As the Landlord was successful, I am awarding the filing fee of \$100.00. The final monetary order is calculated as follows:

Rent arrears	\$324.00
Filing fee	<u>\$100.00</u>
TOTAL:	\$424.00
Less:	
Security deposit	<u>(\$325.00)</u>
Balance Due:	\$ 99.00

This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment. Copies of this order are attached to the Landlord's copy of this Decision.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** 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. I further grant an Order for payment of \$99.00 to the Landlord by the Tenant forthwith.

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: October 22, 2018

Residential Tenancy Branch