



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord sought an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on June 11, 2016 (the "Notice"). Only the Landlord's property portfolio manager, J.S., called into the hearing. She gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:17 a.m. Additionally, 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 representative and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. J.S. testified that H.M., the site representative, personally served the Tenant with the Notice of Hearing and the Application on July 26, 2018. J.S. testified that H.M. spoke to the Tenant about the hearing and the Tenant stated she would not leave until she was forced out of the rental unit. I accept J.S.'s undisputed testimony I find the Tenant was duly served as of July 26, 2018 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, 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 and monetary compensation based on the Notice?

2. Should the Landlord recover the filing fee?

Background and Evidence

J.S. testified that the monthly rent is \$551.00 payable on the first of the month. Pursuant to paragraph 9 of the residential tenancy agreement rent is payable equivalent to 30% of the Tenant's gross income. Also introduced in evidence was a copy of a Declaration of Income and Assets confirming the amount of rent payable.

J.S. further stated that the Notice was served on the Tenant by regular mail sent on June 16, 2018. Section 90 of the *Act* provides that documents sent in this manner are deemed served five days later. The Notice informed the Tenant that she had five days from the date of service in which to pay the rent or make an application for dispute resolution; as the Tenant is deemed served on June 16 she had until June 21, 2018 in which to do so. J.S. testified that the Tenant failed to pay the outstanding rent and failed to make an application for dispute resolution.

J.S. confirmed that the Tenant failed to pay rent as follows:

June 2018	\$545.00
July 2018	\$551.00
August 2018	\$551.00
September 2018	\$551.00
TOTAL OWING:	\$2,198.00

Analysis

Based on the undisputed testimony and evidence before me, and on a balance of probabilities, I find as follows.

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed pursuant to section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Pursuant to section 26 of the *Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation the Tenant had no authority under the *Act* to not pay rent.

I find that the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the Landlord has established a total monetary claim of **\$2,298.00** calculated as follows:

June 2018	\$545.00
July 2018	\$551.00
August 2018	\$551.00
September 2018	\$551.00
Filing fee	\$100.00
TOTAL AWARDED:	\$2,298.00

I grant the Landlord an Order under section 67 for the amount of \$2,298.00. This Order may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession is granted a Monetary Order for the balance due.

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: September 17, 2018

Residential Tenancy Branch