



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BURNABY MOUNTAINVIEW APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNDCL-S, FF

Introduction

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) and later amended for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent / loss / landlord holds deposit - Section 67
3. An Order to recover the filing fee for this application - Section 72.

I accept the landlord's evidence that despite the tenant having been served with the notice of hearing and application for dispute resolution by *registered mail* in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing. The landlord provided proof of registered mail service as identified in the style of cause page. The landlord further testified they personally served the tenant with their amendment to the application. The landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began in September 2015. Current rent in the amount of \$1122.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$495.00 which

they retain in trust. The tenant failed to pay rent in the month of October 2018 and on October 03, 2018 the landlord personally served the tenant with a notice to end tenancy for non-payment of rent for which the landlord provided proof of service. The tenant did not dispute the Notice within the required 5 days to do so and did not pay the rent within the same period. The tenant paid the rent a further 2 days later on October 10, 2018 for which the landlord provided a receipt stating *the rent was accepted for use and occupancy only and not reinstating the tenancy*.

The tenant again failed to pay rent for the month of November 2018 for which the landlord served the tenant another notice to end tenancy for unpaid rent on November 04, 2018 by posting it to the tenant's door and for which the landlord provided proof of service. The tenant responded to the Notice to End by a note to the landlord stating they were not paying the rent in protest to certain issues and their belief they were not required to pay rent until the landlord's application in this matter is resolved. The tenant has not disputed the notice and has not paid the rent. The landlord seeks a monetary order for the current unpaid rent and in addition seeks \$80.00 itemized as \$40.00 for each month the rent has been late/unpaid. The landlord further seeks an Order of possession pursuant to the 2 Notices to End.

Analysis

Pursuant to the tenant's written statements it must be noted that **Section 26** of the Act states as follows (**emphasis added**).

Rules about payment and non-payment of rent

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.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not
(a) seize any personal property of the tenant, or
(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if
(a) the landlord has a court order authorizing the action, or
(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

Based on the evidence I find that the tenant was served with a notice to end tenancy for non-payment of rent on October 03, 2018 and I find the notice to be valid. Despite the

tenant ultimately paying the rent they did so after the permitted time to do so for which they were notified the tenancy was not being re-instated. I find that the tenant was served with another notice to end tenancy for non-payment of rent deemed received November 07, 2018, and I find that notice to be valid complying with Section 52 of the Act. The tenant has not paid the outstanding rent and has not applied for Dispute Resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

Based on all of the above facts I find that the landlord is entitled to an **Order of Possession**.

I also find that the landlord has established a monetary claim for unpaid rent. I find that the landlord's claim for *late payment of rent* fees is not supported by evidence that such a fee was agreed and consequently reflected within the tenancy agreement; but further are also in excess of the amount permitted by Regulation (\$25.00). As a result the amounts in the sum of \$80.00 are dismissed.

The landlord is entitled to recovery of the filing fee. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

| | |
|---|-----------------|
| Unpaid rent – November 2018 | \$1122.00 |
| Late fee X 2 | \$0.00 |
| Filing Fee for the cost of this application | 100.00 |
| <i>Less Security Deposit</i> | <i>-405.00</i> |
| total monetary award to landlord | \$817.00 |

I grant an Order of Possession to the landlord effective **2 days from the day it is served upon the tenant**. The tenant must be served with this Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I Order that the landlord retain the **deposit** of \$495.00 in partial satisfaction of the claim and **I grant** the landlord an Order under Section 67 of the Act for the balance due of **\$817.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application in parts compensable is granted.

This Decision is final and binding.

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: November 28, 2018

Residential Tenancy Branch