



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1138022 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

On November 28, 2018, the Landlord applied for a Direct Request proceeding seeking an Order of Possession for Unpaid Rent pursuant to Section 46 of the *Residential Tenancy Act* (the “*Act*”), seeking a Monetary Order for Unpaid Rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On December 14, 2018, the Landlord’s Application was set down for a Dispute Resolution Proceeding on January 25, 2019 at 9:30 AM.

N.S. attended the hearing as an agent for the Landlord; however, the Tenant did not attend the hearing. All in attendance provided a solemn affirmation.

The Landlord advised that he served the Notice of Hearing package and evidence by registered mail to the Tenant at the dispute address on December 14, 2018. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received the Notice of Hearing package and evidence five days after it was mailed.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for the unpaid rent?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord stated that the tenancy started on May 12, 2018 and that rent was established at \$1,800.00 per month. The Landlord submitted into evidence a tenancy agreement indicating that rent was due on the twelfth of each month. A security deposit of \$900.00 was paid.

He stated that the Tenant paid half of August 2018 rent and did not pay September, October, November, or December 2018 rent. He advised that he served the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") to the Tenant by serving it to an adult that resides with the Tenant on November 6, 2018, and he submitted a signed proof of service document verifying this. The Notice indicated that \$4,500.00 was outstanding on October 12, 2018 and that the effective end date of the Notice was November 16, 2018.

The Landlord advised that the Tenant had abandoned the rental unit and vacant possession of the rental unit was obtained when the Tenant's roommates left on January 1, 2019. As such, an Order of Possession is not necessary to be considered or granted. With respect to the Landlords' claims for unpaid rent, the Landlord is seeking compensation in the amount of **\$8,100.00** for the rent arrears.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

According to Section 46(4) of the *Act*, the Tenant has 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *“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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.”*

The undisputed evidence before me is that the Tenant received the Notice on November 6, 2018. As the fifth day fell on November 11, 2018, the Tenant must have paid the rent in full by this date or made an Application to dispute the Notice by the next available business day at the latest, which was November 13, 2018. The undisputed evidence is that the Tenant did not pay the rent to cancel the Notice or dispute the Notice.

As outlined above, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenant being served the Notice. Moreover, there is no evidence to establish that the Tenant had a valid reason for withholding the rent pursuant to the *Act*. As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice.

As such, I find that the Landlord is entitled to a monetary award for the rent arrears and I grant the Landlord a Monetary Order in the amount of **\$8,100.00**, which is comprised of rent owed for half of August 2018 rent and for the months of September, October, November, and December 2018.

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
August 2018 – Outstanding rent	\$900.00
September 2018 – Outstanding rent	\$1,800.00
October 2018 – Outstanding rent	\$1,800.00
November 2018 – Outstanding rent	\$1,800.00
December 2018 – Outstanding rent	\$1,800.00
Filing fee	\$100.00
Total Monetary Award	\$8,200.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$8,200.00** 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: January 25, 2019

Residential Tenancy Branch