



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent or utilities, for damages to the rental unit, and to recover the filing fee from the tenant.

Although served with the Application for Dispute Resolution and Notice of Hearing, by registered mail, sent on December 20, 2018, the tenant did not appear. A Canada post tracking number was provided as evidence of service.

The landlord's agent testified that the package was returned unclaimed by the tenant.

Section 90 of the Act determines that a document served in this manner is deemed to have been served, five days later. Refusal or neglect to pick up the package does not override the deemed service provisions of the Act. I find that the tenants have been duly served in accordance with the Act.

The landlord's agent testified that the tenant was served another copy, in person, on January 21, 2019.

The landlord's agent, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to a monetary order for damages to the unit?

Background and Evidence

Based on the testimony of the landlord's agent, I find that the tenant was served with a notice to end tenancy for non-payment of rent on December 11, 2018, by regular mail. The agent confirmed the mail was not returned. I find the tenant was deemed served five days after it was mailed.

The notice informed the tenant that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenant had five days to dispute the notice.

The landlord's agent testified on December 11, 2018, the tenant was in rent arrears of \$340.00, at the time the notice to end tenancy was served. The agent stated they did not the outstanding rent unit January 9, 2019, when they received a cheque by a third party in the amount of \$510.00. The agent stated that currently the tenant has a balance of outstanding rent for January 2019, in the amount of \$375.00.

The landlord's agent testified the outstanding rent was not paid within five days. The landlord seeks an order of possession and a monetary order for unpaid rent.

The landlord's agent testified that the tenant caused damage to the rental unit door, and seeks to recover the cost of the repair. The landlord seeks a monetary order for damages in the amount of \$679.64.

The landlord's agent stated that the tenant did not pay a security deposit.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

The tenant has not paid the outstanding rent, did not apply to dispute the notice within five (5) days, and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. I find the tenancy legally ended on December 26, 2018. I find the tenant is currently overholding the rental unit as an occupant.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I accept the undisputed evidence of the landlord's agent that the tenant has a balance of unpaid rent owed for January 2019, in the total amount of \$375.00. I find the tenant breached section 26 of the Act, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$375.00**.

I further accept the undisputed evidence of the landlord's agent that the tenant caused damage to the patio door, which had to be repaired. I find the tenant breached section 32 of the Act, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover damages in the amount **\$679.64**.

I find that the landlord has established a total monetary claim of **\$1,154.64** comprised of above amounts and the **\$100.00** fee paid by the landlord for this application. I grant the landlord a formal order pursuant to section 67 of the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted an order of possession, and a monetary order in the above amount.

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 31, 2019

Residential Tenancy Branch