



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHERLOCK ENTERPRISES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNC, LAT, LRE, OPR, MNRL-S, FFL

Introduction

This hearing dealt with cross applications filed by the parties. On January 14, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to Section 46 of the *Residential Tenancy Act* (the "*Act*") and seeking to cancel a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Act*.

On January 22, 2019, the Tenant amended his Application seeking authorization to change the locks pursuant to Section 31 of the *Act* and seeking to suspend the Landlord's right to enter the rental unit pursuant to Section 70 of the *Act*.

On January 22, 2019, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession for Unpaid Rent pursuant to Section 46 of 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 February 6, 2019, the Landlord amended her Application seeking increased monetary compensation pursuant to Section 67 of the *Act*.

Both the Tenant and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord with the Notice of Hearing package and evidence by registered mail on January 17, 2019 and the Landlord confirmed receipt of this package. Based on the undisputed testimony and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served this package.

The Tenant advised that he did not serve his Amendment to the Landlord. As such, the issues with respect to this were not considered.

The Landlord advised that she served the Tenant with the Notice of Hearing package and evidence by registered mail on January 22, 2019 and the Tenant confirmed that he received this package. Based on the undisputed testimony and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served this package.

The Landlord advised that she served the Amendment to the Tenant by placing it through the Tenant's mail slot and posting it on the Tenant's door on February 6, 2019 and the Tenant confirmed that he received this Amendment. Based on the undisputed testimony and in accordance with Section 88 the *Act*, I am satisfied that the Tenant was served the Amendment.

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 Tenant entitled to have the notices cancelled?
- 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

All parties agreed that the tenancy started on March 1, 2017 and that rent was currently established at \$1,015.00 per month. The Landlord submitted into evidence a tenancy agreement confirming the details of the tenancy. A security deposit of \$487.50 was paid.

The Landlord advised that the Tenant did not pay January 2019 rent as the Tenant's rent cheque was deemed to be insufficient by the bank and was returned. She stated that she served the Notice to the Tenant by taping it to the Tenant's door on January 10, 2019 which indicated that \$1,090.00 was outstanding on January 1, 2019. This comprised of the rent of \$1,015.00 plus a \$50.00 insufficient funds fee, and a \$25.00 late payment fee. The Landlord stated that the tenancy agreement indicated that the insufficient funds and late payment fee were included in the tenancy agreement. The Notice indicated that the effective end date of the Notice was January 20, 2019.

In total, the Landlord is seeking compensation in the amount of **\$2,030.00** for January and February 2019 rent, **\$50.00** for the insufficient funds fee, and **\$50.00** for the late payment fee for January and February 2019 rent, totalling **\$2,130.00**.

The Tenant confirmed that the insufficient funds and late payment fee were included in the tenancy agreement. He advised that he was under the impression that he had the funds available in his account; however, he confirmed that the cheque bounced. He stated that he had a medical emergency on January 2, 2019, that he was not working, and that he was disorganized and did not have any mental clarity. He confirmed that he did not pay January or February 2019 rent and that he did not have authority under the *Act* to withhold the rent.

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.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant received the Notice on January 11, 2019. 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.”

As the fifth day fell on Wednesday January 16, 2019, the Tenant must have paid the rent in full or disputed the Notice by that date at the latest. The undisputed evidence is that the Tenant made his Application on January 14, 2019. However, there is no evidence before me that permitted the Tenant to withhold the rent.

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, the Tenant did not establish that he 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 and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

I also find that the Landlord is entitled to a monetary award and I grant the Landlord a Monetary Order in the amount of **\$2,130.00**, which is comprised of rent owed for the months of January and February 2019, the insufficient funds fee, and the late payment fee for January and February 2019 rent.

As an Order of Possession was granted on the Notice, it was not necessary to consider the reasons and testimony with respect to the One Month Notice to End Tenancy for Cause.

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
January 2019 – Outstanding rent	\$1,015.00
February 2019 – Outstanding rent	\$1,015.00

Insufficient funds fee	\$50.00
Late payment of rent fees	\$50.00
Filing fee	\$100.00
Total Monetary Award	\$2,230.00

Conclusion

I dismiss the Tenant's Application and I grant an Order of Possession to the Landlord **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.

The Landlord is provided with a Monetary Order in the amount of **\$2,230.00** 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: February 25, 2019

Residential Tenancy Branch