



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPR, FFL

On December 19, 2018 the Landlord submitted an Application for Dispute Resolution (the “Application”), seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- a monetary order for unpaid rent or utilities;
- an order granting authorization to retain the security deposit;
- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 11:00AM (Pacific Time) on January 31, 2019, as a teleconference hearing. Only the Landlord and the Landlord’s counsel, M.G., appeared at the hearing, providing affirmed testimony. No one called in for the Tenant. The conference call line remained open and was monitored for 16 minutes before the call ended.

The Landlord testified that he served the Application package and documentary evidence to the Tenant in person on December 20, 2018. In the absence of evidence to the contrary, and pursuant to Sections 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The Landlord was given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

During the hearing, the Landlord indicated that between the time of his Application made on December 19, 2018 and the hearing date, rent had not been paid for January 2019. The Landlord wished to amend his Application to include \$1,800.00 for the month of January 2019.

According to Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"); In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the Application may be amended at the hearing. If an amendment to an Application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In light of the above, I find it is reasonable to amend the Landlord's Application to include unpaid rent for the month of January 2019 in the amount of \$1,800.00.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Should the Landlord be authorized to apply the security deposit against their claim, in accordance with Section 72 of the *Act*?
3. Is the Landlord entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?
4. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord testified that the tenancy began on September 5, 2018. The Landlord testified that currently, rent in the amount of \$1,800.00 is due on the first day of each month and that a security deposit in the amount of \$900.00 was paid. Neither party provided a copy of the tenancy agreement in their documentary evidence.

The Landlord testified the Tenant did not pay rent in full for November or December 2018. The Landlord testified that he subsequently issued a 10 Day Notice to End Tenancy for Unpaid Rent in the amount of \$2,720.00, dated December 7, 2018 (the "10 Day Notice") with an effective vacancy date of December 17 2018. The Landlord stated

that the Notice should read \$2,750.00 instead of \$2,720.00 for unpaid rent as of December 1, 2018, however, did not provide further details relating to the discrepancy.

The Landlord stated that he attempted to serve the 10 Day Notice in person, to an adult who resides with the Tenant, however, the Tenant's roommate refused to accept the 10 Day Notice resulting in the Landlord posting it on the Tenant's door on December 7, 2018. The Landlord submitted a proof of service form indicating that he served the Tenant in person, which did not occur.

The Landlord testified that he received a payment of \$500.00 from the Tenant on December 26, 2018. The Landlord testified that the Tenant failed to pay rent when due for January 2019. The Landlord received a payment of \$800.00 from the Tenant on January 25, 2019.

As noted above, the Tenant did not attend the hearing to dispute the Landlords evidence.

Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 46 of the *Act* states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find based on the Landlord's uncontested testimony that the Landlord served the 10 Day Notice dated December 7, 2018, with an effective vacancy date of December 17, 2018, by posting it on the Tenant's door on December 7, 2018. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 3 days later. I find the Tenant is deemed to have received the 10 Day Notice on December 10, 2018.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant had until December 15, 2018 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept the Landlord's undisputed testimony that after service of the 10 Day Notice, the Tenant paid \$500.00 of the outstanding rent owed. However, as the Tenant did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me that the Tenant disputed the 10 Day Notice, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the corrected effective date of the 10 Day Notice, December 20, 2018, pursuant to section 46(5) of the *Act*.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the Act. 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.

In regards to the discrepancy in the monetary amount sought by the Landlord between the \$2,720.00 listed on the 10 Day Notice and the Landlord's testimony during the hearing indicating the amount should be \$2,750.00, I find that the Landlord provided no evidence to demonstrate an entitlement to this additional amount.

I find that after receiving a partial payment of \$500.00, the Tenant has failed to pay rent in the amount of \$420.00 for November 2018. I find that after receiving a partial payment of \$800.00, the Tenant has failed to pay rent in the amount of \$1,000.00 in December 2018. I further find that the Tenant has failed to pay rent in the amount of \$1,800.00 for January 2019.

In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$3,220.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord retain the portion of the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$2,420.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$3,220.00
Filing fee:	\$100.00
LESS security deposit:	(\$900.00)
TOTAL:	\$2,420.00

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$2,420.00. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 13, 2019

Residential Tenancy Branch