



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPR, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for a Monetary Order for unpaid rent, for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), and for the recovery of the filing fee paid for this application.

The Landlord attended the teleconference hearing while no one called in for the Tenant during the approximately 14-minute duration of the hearing. The Landlord was affirmed to be truthful in his testimony and stated that the Notice of Dispute Resolution Proceeding package and a copy of his evidence was sent to the Tenant by registered mail. The Landlord provided the registered mail tracking information in evidence which shows that the package was sent on January 18, 2019 and delivered on January 21, 2019. Although the signature on delivery was not recorded, the initials on the document from Canada Post are the same initials as the Tenant. As such, I find that the Tenant was duly served in accordance with Sections 88 and 89 of the *Act*.

The Landlord submitted evidence to the Residential Tenancy Branch less than 14 days prior to the hearing date. He testified that this was the same evidence that was sent to the Tenant on January 18, 2019 but was submitted late to the Residential Tenancy Branch due to being out of town. Rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* states that evidence from the applicant must be received by the respondent and the branch not less than 14 days prior to the hearing.

However, based on the registered mail tracking information that was submitted as evidence and the affirmed testimony of the Landlord, I am satisfied that the Tenant was served with the evidence within the required timeframe. Therefore, I find that accepting

the Landlord's evidence will not unfairly prejudice the Tenant, despite it not being served to the branch within the outlined timeframe.

Preliminary and Procedural Matters

The Landlord applied for monetary compensation for unpaid rent up to the time the application was filed, which included January 2019 rent. However, the Landlord testified that since filing the application February rent was also not paid. The Landlord requested that the application be amended to add an additional one month of rent to his claim.

As I find it reasonable that the Landlord would be seeking an additional month of unpaid rent while waiting for the hearing, I amend the Application for Dispute Resolution to add February 2019 rent to his claim. This amendment was made pursuant to rule 4.2 of the *Rules of Procedure*, and Section 64(3)(c) of the *Act*.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlord provided undisputed testimony on the tenancy. The Landlord purchased the home in October 2017 at which time the Tenant was already residing in the rental unit on the lower level of the home. The Landlord stated that he received a \$500.00 security deposit from the previous owners and that the Tenant was to pay \$900.00 in rent on the first day of each month.

The Landlord served the Tenant with a 10 Day Notice on January 5, 2019 by posting the notice on her door. The Landlord submitted a proof of service document signed by a witness confirming that the notice was posted on the Tenant's door on this date.

The 10 Day Notice was also included as evidence and states that \$4,600.00 was unpaid as due on January 1, 2019 and as owing since August 2018. The effective end of tenancy date of the 10 Day Notice was stated as January 14, 2019. The Landlord stated that a previous 10 Day Notice had been served to the Tenant, but he was not granted an Order of Possession in a previous hearing due to an issue with the 10 Day Notice.

The Landlord provided testimony that he was unsure whether the Tenant had moved out. He became aware recently that the majority of her belongings were moved out of the rental unit, although some items remain. As such, the Landlord is still seeking an Order of Possession.

The Landlord stated that the Tenant paid rent in the amount of \$800.00 for August 2018 and has not paid any amount of rent since. He confirmed that the Tenant did not pay the outstanding rent after being served with the 10 Day Notice.

The Landlord confirmed that he is seeking a total of \$5,500.00 in outstanding rent. He submitted a Monetary Order Worksheet outlining a claim of \$4,600.00, and as stated, requested that February 2019 rent be added bringing the total to \$5,500.00.

Analysis

Section 46(1) of the *Act* states that a tenancy may be ended through a 10 Day Notice if rent is unpaid on any day after the day it is due. I accept the testimony of the Landlord that an amount of \$4,600.00 was outstanding as of January 5, 2019 when the 10 Day Notice was served. I also find that the proof of service document signed by a witness confirms that the 10 Day Notice was posted on the Tenant's door in accordance with Section 88(g) of the *Act*.

As stated in Section 46(4) of the *Act*, a tenant has 5 days in which to pay the outstanding rent or to apply to dispute the notice. I accept the testimony of the Landlord that the Tenant did not pay the outstanding rent and I have no evidence before me that the Tenant applied to dispute the notice within the 5-day timeframe. As such, I find that Section 46(5) of the *Act* applies, and the Tenant is conclusively presumed to have accepted that the tenancy ends.

Therefore, I find that Section 55(2) of the *Act* applies, and the Landlord is entitled to an Order of Possession. Upon review of the 10 Day Notice I find the form and content to be

in compliance with Section 52 of the *Act* and therefore I grant a two-day Order of Possession to the Landlord.

Regarding the Landlord's claim for unpaid rent, I accept the testimony of the Landlord that \$800.00 was paid for rent in August 2018 and that no rent has been paid since that time. While the Landlord became aware recently that the Tenant may have moved some of her belongings out of the rental unit, I find that the Tenant still had possession of the rental unit as of February 1, 2019 and therefore owed rent in the amount of \$900.00 as due on February 1, 2019.

Had the Tenant not agreed with the amount of unpaid rent claimed by the Landlord, she had the right to dispute the 10 Day Notice under Section 46 of the *Act* or to attend the hearing and present testimony and evidence in response to the Landlord's claims. Therefore, based on the testimony and evidence of the Landlord and pursuant to Section 67 of the *Act*, I find that the Landlord is owed \$100.00 rent for August 2018 and \$900.00 each month from September 2018 to February 2019.

As the Landlord was successful with the Application for Dispute Resolution, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Landlord may retain the security deposit of \$500.00 towards the total amount owed, pursuant to Section 38(4)(b) of the *Act*.

The Landlord is awarded a Monetary Order in the amount outlined below:

August 2018 rent	\$100.00
September 2018 rent	\$900.00
October 2019 rent	\$900.00
November 2018 rent	\$900.00
December 2018 rent	\$900.00
January 2019 rent	\$900.00
February 2019 rent	\$900.00
Recovery of filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$500.00)</i>
Total owing to Landlord	\$5,100.00

Conclusion

I grant an Order of Possession to the Landlord effective **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.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$5,100.00** for outstanding rent and for the recovery of the filing fee for this application. The Landlord is provided with this Order 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 28, 2019

Residential Tenancy Branch