



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

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

The application was filed under the Direct Request process and an interim decision was issued on January 18, 2019. As the application did not indicate whether the parties lived in separate units, the Direct Request was adjourned to be heard at a participatory hearing for this matter to be clarified.

Both Landlords were present while no one called into the hearing for the Tenant during the approximately 10-minute duration of the hearing. The Landlords were affirmed to be truthful in their testimony and confirmed that they sent the Notice of Direct Request Proceeding documents to the Tenant along with a copy of their evidence by registered mail. The registered mail receipt was submitted as evidence and is included as the first tracking number noted on the front page of this decision. The Landlords testified that they sent a second package to the Tenant by registered mail with the Notice of Dispute Resolution Proceeding package after a participatory hearing was scheduled. They also submitted this tracking information into evidence which is included as the second tracking number on the front page of this decision.

Entering the tracking numbers on the Canada Post website confirms that the first package was delivered, and the second package was returned to the sender after it was not claimed. As such, I find that the Tenant was duly served in accordance with

Sections 88 and 89 of the *Act*. I also note that failure to claim mail is not a ground for review under the *Act*.

Preliminary Matters

The Landlords applied for monetary compensation for unpaid rent for December 2018 and January 2019. However, during the hearing they stated that they were also seeking compensation for February 2019 rent.

As I find that the Tenant would reasonably expect to owe rent for February 2019 as due according to the tenancy agreement and Section 26 of the *Act*, I do not find that adding an additional month of rent to the Landlords' claim would unfairly prejudice the Tenant. Pursuant to Section 64(3)(c) of the *Act*, I amend the Application for Dispute Resolution to add \$1,100.00 to the Landlords' claim for February 2019 rent.

Issues to be Decided

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

Is the Landlord entitled to a Monetary Order 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 Landlords provided undisputed testimony on the tenancy which was also confirmed by the tenancy agreement submitted as evidence. The tenancy began on December 15, 2018. The Tenant was to pay \$550.00 for rent for half of December 2018 as well as a security deposit of \$550.00. Monthly rent in the amount of \$1,100.00 was due on the first day of each month. The Landlords stated that the rental unit is a self-contained lower level unit in their home.

The Landlords testified that the Tenant provided cheques that were returned as non-sufficient funds ("NSF") for rent and for the security deposit in December 2018. They submitted a copy of the returned cheque for the security deposit dated December 12, 2018 and the returned cheque for December 2018 rent dated December 15, 2018.

The Landlords served the Tenant with a 10 Day Notice on December 29, 2018 by posting it on the Tenant's door. The 10 Day Notice was submitted into evidence and stated that \$550.00 was unpaid as due on December 15, 2018. The notice states the effective end of tenancy date as January 8, 2019.

The Landlords stated that the Tenant did not pay the outstanding rent within five days and that they also did not received rent for January or February 2019. They testified that the Tenant recently paid them an amount of \$200.00 towards the total amount owing.

The Landlords stated that the Tenant seems to have moved some of his belongings out, but as there are still some items in the home and they have not received the keys back they are still seeking an Order of Possession.

Analysis

Section 46(4) of the *Act* states that a tenant has 5 days to pay the outstanding rent or to file to dispute a 10 Day Notice. I accept the testimony of the Landlords that the 10 Day Notice was posted on the Tenant's door on December 29, 2018 and that \$200.00 has been paid since service of the 10 Day Notice. I have no evidence before me that the Tenant applied to dispute the 10 Day Notice or paid the remainder of the unpaid rent and therefore I find that Section 46(5) of the *Act* applies:

- (5) 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
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

Accordingly, I find that the Tenant is conclusively presumed to have accepted that the tenancy ends. Upon review of the 10 Day Notice, I find that the form and content comply with Section 52 of the *Act*. Therefore, pursuant to Section 55(2) of the *Act*, I grant an Order of Possession to the Landlords, effective two days after service.

I also accept the testimony and evidence of the Landlord that they are owed rent for half of December 2018, as well as rent for January 2019 and February 2019 and that they

have received a payment of \$200.00 towards the outstanding rent. Pursuant to Section 72 of the *Act*, I award the Landlords the recovery of the filing fee in the amount of \$100.00.

The Landlords are granted a Monetary Order in the amount outlined below:

December 15-31, 2018 rent	\$550.00
January 2019 rent	\$1,100.00
February 2019 rent	\$1,100.00
Filing fee	\$100.00
<i>Less amount received</i>	<i>(\$200.00)</i>
Total owing to Landlord	\$2,650.00

Conclusion

I grant an Order of Possession to the Landlords 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 Landlords a **Monetary Order** in the amount of **\$2,650.00** for outstanding rent and for the recovery of the filing fee for this application. The Landlords are 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: March 04, 2019

Residential Tenancy Branch