



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL OPRM-DR**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order of possession for unpaid rent or utilities and a monetary order pursuant to sections 46, 55 and 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both the landlord and the tenant attended this hearing. As both parties were in attendance, service of documents was confirmed. The tenant acknowledges receipt of the landlord's notice of reconvened hearing and evidence. The tenant did not provide any documentary evidence. Based on the parties' testimonies, I find the tenant was served in accordance with sections 88 and 89 of the *Act*.

While I have turned my mind to all the documentary evidence, including miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

Issue(s) to be Decided

Is the landlord entitled to

- An order of possession for unpaid rent?
- A monetary order for unpaid rent?
- Recovery of the filing fee for this application from the tenant?

Background and Evidence

The landlord provided a copy of the tenancy agreement. This fixed one year tenancy began on January 12, 2019 with a monthly rent of \$2,175.00. A security deposit of \$1,087 was to be provided by the tenant, but it was never received by the landlord.

The parties orally agreed rent from January 12 to January 31, 2019 was to be \$900.00 and both acknowledged this during the hearing. The first payment of rent was through electronic transfer on January 13, 2019, however the landlord never received it or any other rent since the commencement of the tenancy. The landlord testified rent in the amount of \$900.00 is due for January and \$2,175.00 is due for each of the months of February and March. The tenant acknowledges the landlord is owed arrears for this period from January 12 to the end of March 2019.

On January 17, 2019, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent by leaving it in the tenant's mailbox. The tenant acknowledges receiving it on or about January 17, 2019. The effective (move-out) date on the Notice was January 27, 2019.

The tenant testified he transferred the money by electronic transfer and it goes through on his end but is cancelled by the recipient landlord. The funds were returned to his account after refusal. The tenant referred to bank statements as evidence but did not provide them into evidence. The tenant submits the landlord changed his mind about having him as a tenant because he discovered an outstanding warrant in the tenant's name.

Analysis

As the tenant acknowledges receiving the Notice that was put in his mailbox on January 17, 2019, I find he is deemed served with it on that day pursuant to sections 88 and 90 of the *Act*.

Section 26 of the *Act* states:

a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

Section 46 of the *Act* states:

Within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution, 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.

The tenant failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice, in this case by January 22, 2019. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving it. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days has led to the end of the tenancy. The tenant is required to vacate the rental unit by the effective date of the Notice, January 27, 2019.

As the tenant continues to reside in the rental unit beyond the date the tenancy ended, I find that the landlord is entitled to an Order of Possession, effective two days after service upon the tenant.

Monetary Order

The tenant agreed rent was not paid for the period sought by the landlord and agreed the landlord is entitled to compensation for the following amounts.

Month	Rent
January 2019	\$900.00
February 2019	\$2,175.00
March 2019	\$2,175.00
Total	\$5,250.00

As the landlord's application was successful, the landlord is entitled to recover the \$100.00 filing fee for the cost of this application.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$5,350.00** comprising \$5,250.00 rent owed and the \$100.00 fee paid by the landlord for this application.

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 28, 2019

Residential Tenancy Branch