



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence were served on the tenant personally on the rental unit property on March 5, 2019 between 5:00 p.m. and 6:00 p.m. and was witnessed by IK. Based on the undisputed testimony and without any evidence to prove to the contrary, I accept that the tenant was served with the Notice of Hearing, application and documentary evidence on March 5, 2019. As the tenant did not attend the hearing, I find that this application is undisputed and unopposed by the tenant.

Preliminary and Procedural Matters

Firstly, the landlord requested to increase their monetary claim from the original amount of \$2,400.00 to also include loss of rent up to and including April 2019 as the tenant has not paid any rent since December 2018 and continues to owe \$150.00 from December 2018 rent as well. I find the tenant would not be prejudiced by such an amendment as

the tenant would know or ought to have known that by continuing to occupy the rental unit into April 2019 without paying rent that loss of rent would be suffered by the landlord. This amendment was also permitted pursuant to section 64(3) of the *Act*.

The landlord confirmed their email address at the outset of the hearing. The landlord also confirmed their understanding that the decision and any resulting orders would be emailed to the landlord and that the decision would be sent by regular mail to the respondent tenant.

The landlord testified that they are not claiming against the tenant's security deposit as the tenant has already previously surrendered their security deposit to a previous month's unpaid rent that has not been included in the claim before me.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

According to the landlord, a verbal tenancy began in 2013. Originally, monthly rent in the amount of \$850.00 was due on the first day of each month and was eventually lowered to \$750.00 per month due to the tenant having financial difficulties.

The landlord confirmed service of the 10 Day Notice by personal service on the tenant on January 21, 2019, which was witnessed by IK. The landlord referred to a Proof of Service document submitted in evidence which I find supports the landlord's testimony. The 10 Day Notice included an effective vacancy date of January 31, 2019 and indicated that \$900.00 was owed as of January 1, 2019. The tenant did not dispute the 10 Day Notice and did not pay any of the amount owed within five days of receiving the 10 Day Notice or on any date thereafter.

The landlord confirmed that the rental unit remains occupied by the tenant. The landlord's claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid portion of December 2018 rent	\$150.00
2. Unpaid January 2019 rent	\$750.00
3. Loss of February 2019 rent	\$750.00
4. Loss of March 2019 rent	\$750.00
5. Loss of April 2019 rent	\$750.00
TOTAL	\$3,150.00

The landlord testified in support of the amounts owed above and confirmed that the tenant has not paid any amount since being served with the 10 Day Notice and continues to occupy the rental unit.

The landlord is seeking an order of possession as soon as possible, a monetary order for unpaid rent and loss of rent, and to recover the cost of the filing fee.

Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the landlord during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenant failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The effective vacancy date of the 10 Day Notice is listed as January 31, 2019. I find the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which was January 31, 2019. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I find the tenancy ended as of **January 31, 2019**.

Claim for unpaid rent and loss of rent –The landlord testified that the rental unit continues to be occupied and that no rent has been received since the tenant was served with the 10 Day Notice and that the tenant continues to owe \$3,150.00 in unpaid rent and loss of rent. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the undisputed tenancy agreement, which stipulates that rent is due monthly on the first of each month. I find the landlord

has met the burden of proof and has established a monetary claim of **\$3,150.00**, as noted in the table above.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

Monetary Order – I find that the landlord is entitled to a monetary order as follows:

ITEM DESCRIPTION	AMOUNT AWARDED
1. Unpaid portion of December 2018 rent	\$150.00
2. Unpaid January 2019 rent	\$750.00
3. Loss of February 2019 rent	\$750.00
4. Loss of March 2019 rent	\$750.00
5. Loss of April 2019 rent	\$750.00
6. Filing fee	\$100.00
TOTAL AMOUNT OWING BY TENANT TO LANDLORD	\$3,250.00

Given the above, and pursuant to sections 67 and 72 of the *Act*, I grant the landlord a monetary order for the amount owing by the tenant to the landlord in the amount of **\$3,250.00**.

Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$3,250.00 as indicated above. The landlord is granted a monetary order under section 67 for the amount owing by the tenant to the landlord in the amount of \$3,250.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The decision and orders will be emailed to the landlord and will be sent to the tenant by regular mail as the landlord did not have an email address for the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 18, 2019

Residential Tenancy Branch