



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNRL-S

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, pursuant to sections 46 and 55 of the *Act*; and
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:27 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

As only the landlord attended the hearing, I asked the landlord to confirm that he had served the tenant with the Notice of Dispute Resolution Proceeding for this hearing. The landlord testified that the tenant was served with the notice of this hearing and the landlord's evidence by Canada Post registered mail on April 19, 2019. The landlord provided the registered mail receipt and tracking number as proof of service, which I have noted on the cover sheet of this Decision. The landlord testified that to his knowledge the package was delivered to the tenant as it had not been returned back to him, however, the landlord had not confirmed this with a tracking report. Therefore, during the hearing, I accessed the Canada Post website to review the tracking report for

the package. The tracking report indicated that a notice card had been left but the package was not claimed at the post office.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the fifth day after mailing it is served by mail (ordinary or registered mail).

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt, as follows:

Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Therefore, I find that the tenant was served with the notice of this hearing and the landlord's evidence on April 24, 2019, the fifth day after mailing, in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The landlord testified that he no longer had a copy of the written tenancy agreement, therefore no written tenancy agreement was submitted into documentary evidence. As such, the landlord provided the following unchallenged information pertaining the tenancy agreement:

- The tenancy is a month-to-month tenancy that began October 1, 2014.
- Current monthly rent of \$1,800.00 is due on the first of the month.

- The tenant paid a \$900.00 security deposit at the beginning of the tenancy, which continues to be held by the landlord.

As the landlord was unable to submit a copy of the written tenancy agreement into evidence and the tenant did not attend the hearing, I requested that the landlord submit documentary evidence to confirm the existence of a tenancy agreement between him and the tenant. I allowed the landlord until 4:00 p.m. on the day of the hearing to upload the following documents to the Residential Tenancy Branch dispute website:

- Documentation provided to Canada Revenue Agency (CRA) confirming that the landlord receives rental revenue from a tenancy at the dispute address; and
- Copies of rent receipts provided to the tenant as the landlord testified that the tenant paid rent in cash.

The landlord complied with the above directions within the time limit provided by submitting a copy of the “Statement of Real Estate Rentals” from his 2018 CRA income tax submission which noted rental income from the dispute address; and copies of rent receipts provided to the tenant from January 2018 to March 2019.

The landlord testified that the tenant had failed to pay ½ of rent for the month of March 2019, which was \$900.00, but promised to pay it along with the April rent. Subsequently, the tenant failed to pay any rent for April 2019, nor did the tenant pay the remaining \$900.00 outstanding rent for March 2019.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) dated April 2, 2019 by posting it on the tenant’s rental unit door on that same day. The landlord submitted into documentary evidence a Proof of Service form signed by the landlord’s father who witnessed the landlord posting the 10 Day Notice. Therefore, I find that the tenant was served with the 10 Day Notice in accordance with section 88 of the *Act*. As the notice was posted on the tenant’s door, I find that the tenant was in receipt of the notice three days later, on April 5, 2019, in accordance with the deeming provisions pursuant to section 90 of the *Act*.

The landlord submitted a copy of the 10 Day Notice into documentary evidence. The notice stated an effective date for vacancy of the rental unit of April 16, 2019. The notice is signed and dated by the landlord, provides the address of the rental unit, and explains that the notice was issued for unpaid rent of \$2,700.00 that was due on April 1, 2019.

The landlord testified that the tenant did not pay the owed rent in full within five days of receiving the 10 Day Notice. The landlord testified that the tenant continues to reside in the rental unit.

I note that there was no evidence before me that the tenant applied to dispute the landlord's 10 Day Notice within five days of receipt of the notice.

Analysis

In considering this matter, I have reviewed the landlord's 10 Day Notice to ensure that the landlord has complied with the requirements of section 52 of the *Act*. I find that the 10 Day Notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord; provides the address of the rental unit; states the effective date of the notice; and explains the grounds for the tenancy to end.

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

No evidence was presented at the hearing that the tenant had a right under the *Act* to deduct all or a portion of the rent.

Therefore, based on the unchallenged testimony and evidence of the landlord regarding the terms of the tenancy agreement and the evidence before me, on a balance of probabilities, I find that the tenant was obligated to pay monthly rent in the amount of \$1,800.00 on the first of the month, as established in the agreed upon tenancy agreement, and that the tenant failed to pay rent in full when it was due for the months of March and April 2019.

In light of the above, I find that the landlord is entitled to a monetary award in the amount of \$2,700.00 for rental arrears owed by the tenant.

Section 46 of the *Act* provides, in part, the following:

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

(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.

I note that the 10 Day Notice submitted into evidence clearly outlines at the top of the first page that the tenant may face eviction if the tenant does not pay the rent to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch. I also note that second page states that if the tenant does not do either, they are conclusively presumed to have accepted the end of the tenancy and they must move out.

In this matter, the landlord served the tenant with the 10 Day Notice by posting it on the tenant's rental unit door on April 2, 2019, which resulted in the tenant being deemed to have received the notice on April 5, 2019.

I accept the testimony provided by the landlord that the tenant did not pay the amount of rent identified as owing on the 10 Day Notice nor did the tenant apply to dispute the 10 Day Notice within five days of receiving the notice, as provided under section 46(4) of the *Act*.

In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of this tenancy on the effective date of the notice, which in this case required the tenant to vacate the premises by April 16, 2019. As that has not occurred, and the effective vacancy date has passed, I find that the landlord is entitled to an Order of Possession effective two days after service on the tenant.

As the landlord continues to hold the tenant's \$900.00 security deposit, I order that the landlord retain this deposit in partial satisfaction of the monetary award owed by the tenant.

Therefore, in accordance with section 72 of the *Act*, I set-off the amount of the monetary award owed by the tenant to the landlord against the amount of the security deposit held by the landlord.

As such, I find that the landlord is entitled to a Monetary Order of \$1,800.00 as explained below.

Item	Amount
Rental arrears owed by the tenant (\$900.00 + \$1,800.00)	\$2,700.00
LESS: Landlord to retain deposits in partial satisfaction of monetary award	(\$900.00)
Total Monetary Order in Favour of Landlord	\$1,800.00

Conclusion

I order the landlord retain the security deposit of \$900.00 in partial satisfaction of the landlord's entitlement to a monetary award for rental arrears.

For the remaining amount of the monetary award owed to the landlord, I issue a Monetary Order in the landlord's favour against the tenant in the amount of \$1,800.00, to be served on the tenant. 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.

I grant an Order of Possession to the landlord effective two days after service of the Order on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is provided with these Orders in the above terms and the tenant must be served with these Orders as soon as possible.

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: May 31, 2019

Residential Tenancy Branch