



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with the Landlord's Application by Direct Request Proceeding, made on March 20, 2019 (the Application"). An adjudicator issued a decision on April 1, 2019. However, the Tenant submitted an Application for Review Consideration. In a decision issued on April 9, 2019, the original decision was suspended pending the outcome of this new hearing.

Although the Landlord applied for an order of possession for unpaid rent, it was apparent that the Landlord also sought a monetary order for unpaid rent. Pursuant to section 64(3) of the *Act*, I amend the Application to include a request for a monetary order for unpaid rent.

The Landlord seeks the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing at the appointed date and time, and provided affirmed testimony.

The parties agreed the evidence to be relied upon was served on the other party. Although not necessarily served in accordance with the Rules of Procedure, the parties acknowledged receipt and no issues were raised with respect to the evidence relied upon during the hearing. The parties were in attendance at the hearing and were prepared to proceed.

The parties were given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on October 1, 2018. The agreement indicates rent in the amount of \$1,000.00 per month is due on the “30-31” day of each month, for the following month. The parties confirmed this was intended to reflect the last day of each month. The Tenant paid a security deposit in the amount of \$500.00 and a pet damage deposit of \$500.00, which the Landlord holds.

The Landlord testified the Tenant did not pay rent when due on February 28, 2019. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 14, 2019 (the “10 Day Notice”). The 10 Day Notice indicates that, at that time, rent in the amount of \$1,000.00 was outstanding. The Landlord testified the 10 Day Notice was served on the Tenant by posting a copy to the door of the Tenant’s rental unit. A signed Proof of Service document confirming service in this manner was witnessed by T.S. was submitted in support. The Tenant stated she received the 10 Day Notice on March 20 or 21, 2019.

In addition, the Landlord testified rent was also not paid when due on March 31 and April 30, 2019. However, the landlord recalled that he inadvertently neglected to include a payment by the Tenant early in the tenancy that was not reflected in the summary he provided. He testified that \$2,500.00 remains outstanding.

The Tenant's oral testimony was unclear and difficult to follow. The Tenant stated she did not have her documentary evidence in front of her, and was therefore unable to refer me to specific overpayments she maintained were made, particularly in September and October 2018. The Tenant referred to redacted bank statements in support of her claims.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26(1) of the *Act* confirms:

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.

[Reproduced as written.]

The Landlord sought an order of possession. In this case, the Landlord testified, and I find, that the 10 Day Notice was served on the Tenant by posting a copy to the door of the Tenant's rental unit on March 14, 2019. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 3 days later. I find the Tenant is deemed to have received the 10 Day Notice on March 17, 2019. Therefore, pursuant to section 46(4) of the *Act*, the Tenant had until March 22, 2019, to either pay rent in full or to dispute the 10 Day Notice by filing an application for dispute resolution.

The Landlord testified, and I accept, that the Tenant has not paid any rent since the 10 Day Notice was served. Further, there is insufficient evidence before me to confirm the Tenant paid rent in advance as suggested. There is also insufficient evidence before me to find that the Tenant disputed the 10 Day Notice. As a result, pursuant to section 46(5) of the *Act*, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

With respect to the Landlord's claim for unpaid rent, I prefer the evidence of the Landlord. He maintained a consistent and calm demeanour throughout the hearing. In addition, he provided a statement reducing the value of his claim against his own interests. On the other hand, as noted above, the Tenant's testimony was unclear and difficult to follow. She made claims she was unable to support by reference to her documentary evidence. Therefore, I find the Landlord has demonstrated an entitlement to recover unpaid rent in the amount of \$2,500.00.

Having been successful, I grant the Landlord a monetary award in the amount of \$100.00 in recovery of the filing fee. Further, I order that the Landlord may retain the security and pet damage deposits in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$1,600.00, which has been calculated as follows:

Claim	Amount allowed
Unpaid rent:	\$2,500.00
Filing fee:	\$100.00
<i>LESS</i> security and pet damage deposits:	(\$1,000.00)
TOTAL:	\$1,600.00

Conclusion

Pursuant to section 82 of the *Act*, I confirm the order of possession for unpaid rent dated April 1, 2019.

Pursuant to section 82 of the *Act*, I vary the monetary order for unpaid rent dated April 1, 2019. In light of the testimony provided by the Landlord, I find the Landlord is entitled to a monetary order in the amount of \$1,600.00, as calculated above. The monetary order dated April 1, 2019, is of no force or effect. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 27, 2019

Residential Tenancy Branch