



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on January 31, 2023. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The Landlord attended the hearing and provided affirmed testimony. The tenant did not attend the hearing. The landlord testified that they sent the application package, along with his supporting evidence to the tenant on December 31, 2022, by registered mail. Mail tracking information was provided at the hearing. I find the tenant is deemed to have received this package on January 5, 2023, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The Landlord has requested to amend their application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I hereby amend the Landlord's application accordingly.

The Landlord was provided 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.

Issue(s) 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?

Background and Evidence

The Landlord provided a copy of the tenancy agreement between the parties into evidence. Monthly rent was set at \$2,400.00 and was due on the first of the month. The Landlord holds a security deposit of \$1,200.00.

The Landlord provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), which was hand delivered to the tenant's mailbox on October 10, 2022. The Landlord provided a Proof of Service document, stating the 10 Day Notice was served on October 19, 2022. However, the Landlord explained that this was a mistake and it was actually served on October 10, 2022. The 10 day Notice specified that the tenant owed \$2,400.00 in rent, as of October 1, 2022.

The Landlord stated that the Tenant paid \$2,350.00 during the month of October, but still owes \$50.00 for that month. The Landlord also stated that the Tenant has failed to pay any rent for November, December, or January, totalling \$7,250.00.

Analysis

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

Section 26 of the *Act* confirms 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. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to

have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenant had a balance of unpaid rent, in the amount of \$2,400.00, at the time the 10 Day Notice was issued. The 10 Day Notice was left in the Tenant's mailbox on October 10, 2022. Pursuant to section 90 of the *Act*, I find the Tenant is deemed to have received this notice 3 days later, on October 13, 2022.

The tenant had 5 days to pay rent in full or file an application for dispute resolution. Although the Tenant made some payments, they did not pay in full. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the 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 request for a monetary order for unpaid rent, I find there is sufficient evidence from the Landlord to demonstrate that the tenant owes and has failed to pay rent totalling \$7,250.00, as laid out above.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenant to repay the \$100. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent	\$7,250.00
Other:	
Filing fee	\$100.00
TOTAL:	\$7,350.00

Conclusion

The landlord is granted 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.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$7,350.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: February 1, 2023

Residential Tenancy Branch