



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

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 section 55;
- a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 0944 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. 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.

The landlord testified that he served the tenant with the dispute resolution package on 2 March 2015 by registered mail. The landlord provided me with a Canada Post tracking number that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with dispute resolution package pursuant to sections 89 and 90 of the Act.

The landlord testified that he served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 15 February 2015 by posting that notice to the tenant's door. On the basis of this evidence, I am satisfied that the tenant was deemed served with 10 Day Notice pursuant to sections 88 and 90 of the Act on 18 February 2015, the third day after its posting.

Preliminary Issue – Landlord's Late Evidence

The landlord testified that he served the tenant with the landlord's evidence on or about 17 or 18 March 2015 by regular mail. In accordance with section 90 of the Act, the tenant is deemed to have received this evidence on or about 23 or 24 March 2015, the fifth day after its mailing.

Rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) establishes that evidence from the applicant must be submitted not less than 14 days before the hearing. The definition section of the Rules contains the following definition: In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.14 and the definition of days, qualified by the words "not less than", the last day for the landlord to file and serve additional evidence was 17 March 2015.

This evidence was not served within the timelines prescribed by rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the Rules). Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

The landlord's evidence included copies of text messages from the tenant of which the tenant was entitled to verify authenticity. Admitting this evidence would be unduly prejudicial to the tenant. Accordingly, I exclude the late evidence from consideration in this hearing.

Preliminary Issue – Landlord's Requests to Amend 10 Day Notice

At the hearing the landlord asked to amend the 10 Day Notice to the correct amount of rent outstanding as of 1 February 2015, that is, \$1,335.00.

Subsection 68(2) of the Act allows me to amend a notice given under the Act that does not comply with the Act. In this case, the landlord failed to provide the correct amount of rent that was outstanding. This mistake does not go to the substance of the 10 Day Notice, that is, there was outstanding rent owed by the person to whom the notice was

delivered. The tenants knew that the 10 Day Notice was issued for rent arrears from December, January and February. For these reasons, I am exercising my discretion to amend the 10 Day Notice to the tenants' correct amount of rent arrears.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

The landlord purchased the residential property in which the rental unit is located in 2014. The landlord took possession of the residential property in March 2014. Monthly rent of \$600.00 is due on the first. The landlord testified that the previous owner of the rental unit provided the tenant's security deposit in the amount of \$250.00 to the landlord. The landlord testified that he continues to hold the tenant's security deposit.

On 15 February 2015, the landlord issued the 10 Day Notice to the tenant. The 10 Day Notice was dated 15 February 2015 and set out an effective date of 26 February 2015. The 10 Day Notice set out that the tenant failed to pay \$1,335.00 (as amended) in rent that was due on 1 February 2015. The rental arrears included \$135.00 from December and \$600.00 from February and \$600.00 from March.

The landlord testified that the tenant has not paid any amount to the landlord since December 2014. The landlord testified that the tenant has not provided any receipts for emergency repairs. The landlord testified that there have been no other applications before the Residential Tenancy Branch in respect of this tenancy.

The landlord seeks a total monetary order in the amount of \$1,735.00:

Item	Amount
Unpaid December Rent	\$135.00
Unpaid January Rent	600.00
Unpaid February Rent	600.00
Unpaid March Rent	600.00
Less Retained Security Deposit	-250.00
Recover Filing Fee	50.00
Total Monetary Order Sought	\$1,735.00

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant did not have any entitlement to withhold rent. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by 28 February 2015, the corrected effective date of the 10 Day Notice. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The landlord has provided sworn and uncontested testimony that the tenant has unpaid rental arrears totaling \$1,935.00. The landlord claims this amount as both rent and a rental loss. I find that the landlord has proven his entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent.

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,735.00 under the following terms:

Item	Amount
Unpaid December Rent	\$135.00
Unpaid January Rent	600.00
Unpaid February Rent	600.00
Unpaid March Rent	600.00
Less Retained Security Deposit	-250.00
Recover Filing Fee	50.00
Total Monetary Order	\$1,735.00

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) 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.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: April 01, 2015

Residential Tenancy Branch

