



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNDC FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on September 1, 2016 (the "Application").

The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

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

The Landlord attended the hearing on her own behalf and promised to tell the truth during the hearing. The Landlord was assisted by M.M. The Tenant did not attend the hearing.

The Landlord testified that the Tenant was served with the Notice of a Dispute Resolution Hearing and evidence upon which the Landlord intended to rely by registered mail. The Landlord submitted a Canada Post Customer Receipt, dated September 7, 2016, in support. Pursuant to section 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Tenant is deemed to have received the Notice of a Dispute Resolution Hearing and supporting evidence on September 12, 2016.

The Landlord was given an 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 a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
3. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlord provided details concerning the month-to-month tenancy, which began on April 22, 2016. According to the Landlord, the Tenant agreed to pay rent of \$750.00 from April 22–30, 2016. Subsequently, rent in the amount of \$2,500.00 per month was due on the first day of each month. Although a security deposit of \$1,250.00 was requested, it was never paid by the Tenant.

The Landlord testified that no rent has been paid by the Tenant since the tenancy began. Included with the Landlord's documentary evidence were copies of several bank statements showing cheques that were returned because the Tenant's account had been closed. According to the Landlord, rent of \$15,750.00 is currently outstanding, although the Tenant continues to occupy the rental unit.

As the Tenant did not pay rent when due, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 23, 2016 (the "10 Day Notice"). The 10 Day Notice had an effective date of September 5, 2016. According to the Landlord, the 10 Day Notice was served on the Tenant by attaching a copy to the door of the Tenant's rental unit. The Landlord's documentary evidence included a photograph of the 10 Day Notice attached to the door of the rental unit, as well as a Proof of Service form.

The Tenant did not attend the hearing.

Analysis

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

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. In this case, the Landlord testified, and I find, that the Tenant has not paid any rent since the tenancy began on April 22, 2016, and that rent of \$15,750.00 remains outstanding. Accordingly, I am satisfied the Landlord is entitled to a monetary order for unpaid rent in the amount of \$15,750.00.

When a tenant does not pay rent when due, section 46 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 and wishes to dispute it has 5 days to either pay rent or file an application for dispute resolution. When a tenant does not pay rent or file an application for dispute resolution, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

The Landlord's evidence was that the 10 Day Notice was served on the Tenant by posting a copy to the door of the Tenant's rental unit on August 23, 2016. Pursuant to section 90 of the *Act*, documents served in this manner are deemed to be received three days later. Accordingly, I find the Tenant is deemed to have received the 10 Day Notice on August 26, 2016.

However, the Tenant did not pay rent or file an application for dispute resolution in the applicable time period. Accordingly, the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice. However, she continues to occupy the rental unit. As a result, I find the Landlord is entitled to an order of possession, which will be effective one (1) day after service on the Tenant.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make this Application.

I find the Landlord has established a total monetary claim of \$15,850.00, comprised of \$15,750.00 in unpaid rent and \$100.00 in recovery of the filing fee.

Conclusion

I grant the Landlord an order of possession, which will be effective one (1) day after service on the Tenant. This Order may be filed in and enforced as an order of the Supreme Court of British Columbia.

In addition, I grant the Landlord a monetary order in the amount of \$15,850.00. This 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: October 05, 2016

Residential Tenancy Branch