



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LMLTD HOLDINGS CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened pursuant to the Landlord's Application for Dispute Resolution, dated December 30, 2016 (the "Application"). The Landlord applied for 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 was represented at the hearing by E.J. The Tenant attended the hearing on his own behalf. Both parties provided a solemn affirmation.

The Landlord testified that the Tenant was served with the Landlord's Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, by registered mail on January 5, 2017. The Tenant acknowledged receipt of the Landlord's Application package. The Tenant did not submit any documentary evidence in response to the Landlord's Application.

The parties were 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 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 an order granting recovery of the filing fee?

Background and Evidence

The Landlord submitted into evidence a copy of the written tenancy agreement between the parties. It confirms a fixed-term tenancy for the period from November 1, 2014 to October 31, 2015. At the end of the fixed term, the tenancy continued on a month-to-month basis. Rent in the amount of \$1,360.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$680.00, which the Landlord holds.

On behalf of the Landlord, E.J. testified the Tenant did not pay rent when due on December 1, 2016. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 2, 2016 (the "10 Day Notice"). According to the Landlord, the 10 Day Notice was served on the Tenant by attaching copy to the door of the Tenant's rental unit on that date. The Tenant acknowledged receipt of the 10 Day Notice.

Further, E.J. testified that the Tenant has not made any further rent payments, and that rent in the amount of \$2,720.00 remains outstanding for December 2016 and January 2017. The Tenant acknowledged the amount of rent outstanding, and that he continues to occupy the rental unit. He suggested financial issues have been the reason rent has not been paid.

On behalf of the Landlord, E.J. also asked to retain the security deposit in partial satisfaction of any monetary order granted.

Analysis

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

Section 46 of the *Act* permits a landlord to end a tenancy for unpaid rent. When rent remains unpaid on any day after the day it is due, a landlord can issue a notice to end tenancy for unpaid rent. On receipt, a tenant has five days to either pay rent or dispute the notice to end tenancy by filing an application for dispute resolution. Failure to do

one of these two things results in the conclusive presumption that the tenant has accepted the tenancy ends on the effective date of the notice.

In this case, the Landlord served the 10 Day Notice on December 2, 2016, by attaching a copy to the door of the Tenant's rental unit. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received three days later.

Accordingly, I find the Tenant was duly served with the 10 Day Notice on December 5, 2016. However, the Tenant did not pay rent or file an application for dispute resolution within five days after being served with the 10 Day Notice. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

Further, section 26 of the *Act* confirms that a tenant must pay rent when 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 did not pay rent when due on December 1, 2016, and has not made any payments since. The total amount of rent outstanding is \$2,720.00. Accordingly, the Landlord is entitled to a monetary award of \$2,720.00 for unpaid rent.

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

The Landlord has also asked to apply the security deposit to any monetary award I make, which I allow. Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$2,140.00, which has been calculated as follows:

Claim	Amount
December 2016 rent:	\$1,360.00
January 2017 rent:	\$1,360.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$680.00)
TOTAL:	\$2,140.00

Conclusion

I grant the Landlord an order of possession, which will be effective **two (2) days** after it is served on the Tenant. This order may be filed in and enforced as an order of the Supreme Court of British Columbia.

I grant the Landlord a monetary order in the amount of \$2,140.00. 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: January 23, 2017

Residential Tenancy Branch