



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This was the landlord's application under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent, a monetary order for unpaid rent, authorization to retain the security deposit and authorization to recover the filing fee.

The tenant did not attend the hearing. The individual landlord attended and was given a full opportunity to be heard, to present affirmed testimony and documentary evidence and to make submissions.

As the tenant did not attend the hearing, service of the landlord's application and the notice of hearing were considered. The landlord provided affirmed testimony that she sent these materials by registered mail to the rental unit address. A Canada Post tracking number was provided at the hearing and is reproduced on the cover page of this decision. A tenant is deemed to have received registered mail five days after it was sent. Accordingly, I accept that the tenant was served in accordance with the Act.

The landlord amended her application during the hearing to add a claim for outstanding April and May rent and I accepted the request to amend as per Rule 4.2 of the Rules of Procedure on the basis that the tenant can reasonably anticipate that the amount owing for rent will increase after the date of the application.

Issues 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?

Is the landlord authorized to retain the security deposit?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

According to the landlord's affirmed and undisputed evidence, this tenancy began November 15, 2016 as a month to month tenancy with rent of \$1,100 payable on the first day of each month. A security deposit of \$550.00 was made at the start of the tenancy and remains in the landlord's possession. The landlord was reminded that a written tenancy agreement is the landlord's responsibility under the Act.

The landlord testified that the tenant failed to pay the rent due on March 1, 2017. She further testified that she personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 20, 2017 (the "10 Day Notice") on the same day. The landlord provided a Proof of Service document signed by a witness as evidence of this.

The landlord stated that the tenant failed to either dispute the notice or pay the full rent owing within five days of being served. Although he paid a portion of March's rent, \$320.79 remains outstanding. A receipt dated March 21, 2017 showing this was submitted in evidence. The landlord further testified that the tenant has not paid rent for April or May, and that the tenant remains in the rental unit and appears to be having some difficulties.

The landlord's monetary worksheet also included a claim for utilities for 5 months in the amount of \$1,017.18 and estimated cleaning and repairs of \$1,600.00. The landlord did not provide any evidence in support of the claim for unpaid utilities and outstanding utilities were not claimed in the 10 Day Notice. At the hearing the landlord waived her claim for utilities. She was advised her application for repairs is premature as the rental unit is not yet vacant.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I accept that the tenant did not pay March rent in full within five days of being served the 10 Day Notice. I further accept that the tenant now also owes for April and May. The landlord waived her claim for unpaid utilities and the claim for damages to the rental unit is premature as the tenant has not vacated. Accordingly, I find that the landlord is owed \$2,520.79 in unpaid rent for March through May, inclusive.

The tenant has not made an application to dispute the 10 Day Notice. In accordance with section 46(5) of the Act, the failure of the tenant to pay March arrears in full or apply to dispute the 10 Day Notice within five days of receipt of the notice led to the end of this tenancy on March 30, 2017, the effective date of the 10 Day Notice. The tenant and anyone on the premises was required to vacate

the premises by that date. As this has not occurred, and as rent remains outstanding, I find that the landlord is entitled to a two (2) day order of possession. The 10 Day Notice complies with section 52 of the Act.

Section 7 and 67 establish that a tenant who does not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. The landlord provided undisputed evidence the tenant owes \$2,520.79 for March through May, inclusive. As the landlord was successful in this application, I also award her the \$100.00 filing fee, for a total of \$2,620.79.

I authorize and order the landlord to retain the tenant's security deposit of \$550.00 in partial satisfaction of the \$2,620.79 owing, pursuant to s. 72 of the Act. I make a monetary order in favour of the landlord for the balance owing of **\$2,070.79**, which the landlord is at liberty to enforce if she wishes.

Conclusion

I authorize the landlord to retain the security deposit in partial satisfaction of unpaid rent and I grant the landlord a monetary order for the balance owing of **\$2,070.79**. If the landlord wishes to enforce this order, the tenant must be served with it as soon as possible. Should the tenant fail to comply with the order it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant or anyone on the premises 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 s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided.

Dated: May 05, 2017

Residential Tenancy Branch