



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC MNR MNSD OPR

Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application for:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent, and for money owed for damage or loss under the *Act*;
- an application to keep all or part of the damage deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee from the tenant, pursuant to section 72 of the *Act*.

While the landlord, K.O., attended the hearing by way of conference call, the tenant, did not. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was posted on the door of the rental unit on April 10, 2017. I find that in accordance with sections 88 and 90 of the *Act* the 10 Day Notice was deemed to have been served on the tenant on April 13, 2017.

The landlord testified that the tenant was sent the Landlord's Application for Dispute Resolution hearing package ("dispute resolution hearing package") by way of Registered Mail on April 27, 2017. The Canada Post tracking number was provided for the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed to be served with the landlord's dispute resolution hearing package on May 1, 2017.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order for unpaid rent?

Can the landlord apply the security deposit against any Monetary Order issued?

Is the landlord entitled to recovery of the filing fee from the tenant?

Background and Evidence

The landlord provided the residential tenancy agreement as part of her evidentiary package, and gave testimony that the tenancy agreement in question began on February 15, 2017. This was a fixed-term tenancy set to end on February 28, 2018. Rent was \$1,200.00 per month and a security deposit of \$600.00 continues to be held by the landlord.

The landlord has applied for an Order of Possession and a Monetary Order for non-payment of rent for the entire period of this tenancy. This includes half of February 2017, along with the months of March and April 2017. The landlord is also looking to recover unpaid utilities for this time period, to recover the filing fee and to recover late fees agreed upon by the tenant as part of the residential tenancy agreement:

Item	Amount
½ Unpaid Rent February 2017	\$600.00
Unpaid Rent March/April 2017 (2 x \$1,200)	2,400.00
Late Fees	75.00
Filing Fee	100.00
Unpaid Hydro Bill	31.97
Total =	3,206.97

The landlord explained that the tenant continued to occupy the rental unit until the final week of May 2017.

Analysis

The tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of

the *Act*, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by April 15, 2017. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant.

The landlord provided testimony and written evidence was submitted with the hearing package demonstrating that rent has not been paid for the entire period of the tenancy. Since the tenant continued to occupy the rental unit throughout the month of May 2017, the landlord is entitled to rent for this month as well. Pursuant to section 67 of the *Act* and based on the landlord's uncontested evidence, I find that the landlord is entitled to a monetary award of \$4,406.97.

The landlord has applied to retain the security deposit for this tenancy, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's \$600.00 security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in her application, she can, pursuant to section 72 of the *Act*, recover the cost of the \$100.00 filing fee from the tenant.

Conclusion

I am granting the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I am making a Monetary Order of \$3,806.97 in favour of the landlord as follows:

Item	Amount
Rental Arrears for ½ February 2017	\$600.00
Rental Arrears for March 2017	1,200.00
Rental Arrears for April 2017	1,200.00
Rental Arrears for May 2017	1,200.00

Recovery of Filing Fee	100.00
Unpaid Hydro utilities	31.97
Late Fees	75.00
Less Security Deposit	(-600.00)
Total Monetary Award	\$3,806.97

The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: June 1, 2017

Residential Tenancy Branch