



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0737694 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This is a reconvened hearing dealing 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 pursuant to section 67.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord stated that the tenant was served with the notice of hearing package in person on May 6, 2017 and provided a copy of a completed proof of service document which shows that the tenant had signed in receipt of the notice of hearing package. The landlord also stated that the tenant was served with the submitted documentary evidence in person (to the tenant's daughter, also an occupant) on May 20, 2017. I accept the undisputed affirmed evidence of the landlord and find that the tenant has been properly served as per sections 88 and 89 of the Act.

During the hearing the landlord clarified that he had amended his monetary claim from \$850.00 to \$3,075.00 and has now corrected the amount to \$2,875.00. The landlord stated that the amended application was served to the tenant with submitted documentary evidence on May 20, 2017. I accept the undisputed affirmed evidence of the landlord and find that the tenant has been properly served as per section 89 of the Act with the amended monetary claim.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?
Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

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

This tenancy began on December 6, 2013 on fixed term tenancy ending on November 30, 2014 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated December 6, 2013. The monthly rent is \$1,350.00 payable on the 1st day of each month. A security deposit of \$675.00 was paid on December 6, 2013.

The landlord stated that the tenant was served with a 10 Day Notice dated April 21, 2017 in person on April 21, 2017. The landlord has provided a copy of a proof of service document showing that the tenant's daughter has signed in receipt of the 10 Day Notice in the presence of a witness on April 21, 2017. The 10 Day Notice sets out an effective end of tenancy date of May 1, 2017 and that the tenant failed to pay rent of \$850.00 that was due on April 1, 2017.

The landlord clarified that the tenant has moved most of her things out of the rental premises, but that the tenant's daughter and another person still occupy the unit and refuse to vacate it.

The landlord seeks an order of possession and a monetary order for unpaid rent of \$2,875.00. The landlord clarified that the amount owed is for unpaid rent:

\$850.00	Unpaid Rent, April 2017
\$1,350.00	Unpaid Rent, May 2017
\$675.00	Unpaid Rent, ½ June 2017

The landlord stated that the tenant has failed to pay all of the rent owed for April 2017 after only receiving a \$500.00 payment on April 10, 2017. The landlord stated that since the 10 Day Notice was served on April 21, 2017 no rent has been paid as of the date of this hearing.

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 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 her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by May 1, 2017. As

that has not occurred, I find that the landlord is entitled to a two-day order of possession. The landlord will be given a formal order of possession which must be served on the tenant(s).

As for the monetary claim, I find based upon the undisputed evidence of the landlord that the tenant having been properly served with the 10 Day Notice dated April 21, 2017 has failed to provide vacant possession of the rental premises. I also accept the landlord's undisputed evidence that the tenant's daughter still occupies the rental unit as of the date of this hearing. As such, I find that the landlord has established a monetary claim of \$2,875.00 consisting of:

\$850.00	Unpaid Rent, April 2017
\$1,350.00	Unpaid Rent, May 2017
\$675.00	Unpaid Rent, ½ June 2017

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for unpaid rent of \$2,875.00.

These orders must be served upon the tenant. Should the tenant fail to comply with the order(s), the order(s) may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as an order of those courts.

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 15, 2017

Residential Tenancy Branch