



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR/FFL

Introduction

On April 22, 2018, the Landlord submitted an Application for Dispute Resolution by Direct Request under the *Residential Tenancy Act* ("the Act"). The Landlord was requesting an Order of Possession due to unpaid rent, a Monetary Order to recover the unpaid rent, and to be compensated for the cost of the Filing Fee. The Landlord's evidence was reviewed and found to be incomplete; therefore, the matter was set for a participatory hearing via conference call.

The Landlord attended the conference call hearing; however, the Tenant did not attend at any time during the 54-minute hearing. The Landlord testified that the Notice of Hearing was sent to the Tenant by registered mail on April 24, 2018. The Landlord provided the tracking number for the registered mail and advised that, regardless of a Canada Post notice card being left at the Tenant's door on April 25, 2018, the Notice of Hearing package was not picked up by the Tenant. I find that the Tenant is deemed to have received the Notice of Hearing on April 29, 2018, in accordance with Sections 89 and 90 of the Act.

The Landlord was provided the opportunity to present their affirmed testimony, written and documentary evidence and to make submissions at the hearing. 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

Should the Landlord be granted an Order of Possession for the rental unit?
Should the Landlord be granted a Monetary Order for unpaid rent?
Should the Landlord be reimbursed for the Filing Fee?

Background and Evidence

The Landlord testified that the Tenant is living in a “Supportive Housing” environment and, although occupying the rental unit with another person, has a separate tenancy agreement with the Landlord. The tenancy began on January 5, 2017 and the rent is \$225.00 per month on a month-to-month basis. No security deposit was collected from the Tenant.

The Landlord provided some context for the current situation where the Tenant has not been paying rent since October 2017. There has been ongoing debate between the Tenant and the Landlord regarding the amount of rent that should be charged. The Landlord testified that there was an agreement that the Tenant would pay for the small amount of rent in arrears for February 2018 and in March of 2018, would start paying rent of \$225.00 a month. The Landlord submitted documentary evidence to support this agreement with the Tenant.

The Landlord stated that the Tenant did not pay any of the rent for February or March and when the Tenant failed to pay rent for April 2018, the Landlord sent a Ten Day Notice to End Tenancy, dated April 5, 2018 (the “Notice”) to the Tenant via registered mail. The Landlord acknowledged that she recorded the wrong effective vacate date on the Notice and instead of April 5, 2018, it should have been April 15, 2018. The Landlord provided the tracking number for the registered mail and, regardless of the Canada Post notice card being left at the Tenant’s door on April 6, 2018, the Notice was not picked up by the Tenant.

The Landlord testified that the Tenant is still living in the rental unit and has not paid the partial rent for February, nor the rent for March, April or May 2018. The details from the monetary worksheet that the Landlord submitted as evidence, including the unpaid rent for May 2018, adds up as follows:

Item	Amount
Unpaid partial Feb 2018 Rent	\$32.50
Unpaid March 2018 Rent	225.00
Unpaid April 2018 Rent	225.00
Unpaid May 2018 Rent	225.00
Total Unpaid Rent	\$707.50

Analysis

Section 46 of the Act authorizes a Landlord to end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the Tenant receives the notice. The Tenant, within 5 days after receiving the notice, may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an Application for Dispute Resolution. If the Tenant does not pay the rent or make an Application for Dispute Resolution, the Tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

I accept the undisputed evidence of the Landlord that the Notice was sent, via registered mail, to the Tenant on April 5, 2018. Section 90 of the Act considers a document to be received if served by mail on the 5th day after it is mailed. Accordingly, I find that the Tenant is deemed to have received the Notice on April 10, 2018.

Section 53 of the Act authorizes me to amend an incorrect vacate date on the Notice. On the Notice, the Landlord advised the Tenant that the tenancy would end on April 5, 2018 if the rent remained unpaid or if the Tenant did not file for Dispute Resolution. The Landlord testified that she should have corrected the date to April 15, 2018. When I consider the service of the Notice via registered mail, I find that the correct effective vacancy date is 10 days after the Tenant is deemed to have received the Notice. As the Tenant is deemed to have received the Notice on April 10, 2018, I find that April 20, 2018, is the amended vacate date and the date that the Tenant has accepted as the end of the tenancy.

As the tenancy has ended and the Tenant is still occupying the rental unit, I find that the Landlord should be granted an Order of Possession.

I accept the Landlord's uncontested testimony that the Tenant is in arrears for \$707.50 of unpaid rent and I find that a Monetary Order should be granted to the Landlord for these losses.

I find that the Landlord's Application has merit and that the Landlord is entitled to recover the \$100.00 cost of the Filing Fee for this Application for Dispute Resolution.

Conclusion

I am granting the Landlord an Order of Possession to be effective two days after notice is served on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord has established a monetary claim, in the amount of \$807.50, which includes \$707.50 in unpaid rent and \$100.00 in compensation for the Filing Fee for this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a Monetary Order for \$807.50. If the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: May 15, 2018

Residential Tenancy Branch