



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM, MNRL-S, FFL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord requesting an Order for Possession from a 10 Day Notice to End Tenancy for Unpaid Rent. The Landlord also requests payment of the balance of the April rent, the May rent and unpaid utilities, as well as an order for payment of the filing fee. The Landlord asks to retain the security deposit as partial payment of the amounts outstanding.

The Landlord and his agent, SA, appeared for the scheduled hearing. No one appeared for the Tenant. The Notice of Hearing was served by email and by registered mail on April 19, with an amendment delivered April 30th. The Tenant failed to pick up the registered mail, so everything was delivered a second time and a signature recorded by Canada Post on May 22, 2018. I find that the Notice of Hearing was properly served and that evidence was properly submitted.

The Tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:50 p.m. in order to enable the Tenant to call into this teleconference hearing scheduled for 1:30 p.m. The Landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony/affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord, his advocate and I were the only ones who had called into this teleconference.

The Landlord requested an amendment to the Application to remove the request for payment of the May rent of \$1,650.00, which was granted.

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenant did not call into the conference call by 1:50 p.m., the hearing was conducted in her absence and the Application, as amended, was considered along with the evidence as presented by the Landlord and his Advocate.

Issue(s) to be Decided

Is the Landlord entitled to an Order for Possession for Unpaid Rent pursuant to section 46 and 55 of the Residential Tenancy Act ("Act")?

Is the Landlord entitled to a Monetary Order for payment of rent arrears of \$850.00 and for payment of unpaid utilities in the amount of \$549.72, under section 67 of the Act?

Is the Landlord entitled to retain the security deposit in partial satisfaction of any monetary award, pursuant to section 67 of the Act?

Is the Landlord entitled to the \$100.00 filing fee, pursuant to section 72 of the Act?

Background and Evidence

The written Tenancy Agreement was submitted into evidence and indicates that the tenancy began on August 1, 2017 with a monthly rent of \$1,650.00 payable on the 1st of each month. A security deposit of \$825.00 was paid. Paragraph 3 of the agreement indicates that certain utilities, specifically water and heat, are not included in the monthly rental payment. The Landlord testified that the Tenant had agreed to put B.C. Hydro and Gas into her name. He states that the Tenant put the hydro bills into her name and paid that utility bill, but that she did not transfer the Fortis natural gas bills into her name, resulting in a \$549.74 outstanding bill for the duration of the tenancy. The Landlord states that he recently discovered this and paid the outstanding charges, and that the Tenant was the only person residing in the home that is the subject of this tenancy.

The Landlord states that the Tenant failed to pay her April rent and as a result, a 10 Day Notice to End Tenancy for Unpaid Rent was served by posting the notice on the Tenant's door on April 4, 2018 with an effective date of April 14, 2018. The Proof of Service form does not contain the witness signature, but the witness testified at the hearing that she was present for the posting on April 4th.

On April 5, 2018, the Tenant paid \$825.00 via e-transfer, along with a message "keep the damage deposit". The payment was accepted "for use and occupancy", and the Landlord agreed to allow some additional time to pay the remaining \$825.00 owing for the month. The Tenant did not dispute the Notice within the required five days and did not pay the balance. She did not vacate the premises in April, and made another

payment of \$1,650.00 on or about May 2nd, which the Landlord accepted “for use and occupancy” only. She was told to vacate by May 15th but has failed to do so. The Landlord's advocate states that the Tenant's number is no longer in service and she has not been in contact since May 7th.

Analysis

Under section 46 of the Act, a landlord may serve a 10 Day Notice to Vacate for Unpaid Rent. The effective date of that notice is automatically adjusted to April 17, 2018 to allow the three days for service by way of posting on the door, pursuant to sections 88 and 90 of the Act. When this Notice was delivered, the April rent of \$1,650.00 had not been paid. Only one-half was paid by the Tenant within the 5 days following service, and she remains in the premises. I find that the Notice was properly served and that the Landlord has proven grounds to end the tenancy; an Order for Possession will be granted.

As for the April rent, \$825.00 is in arrears. I find that the Landlord has proven his claim for a monetary award in that amount. I find that the Landlord has also proven his claim, on a balance of probabilities, for the payment of the gas bill. Heating was not included in the monthly rental fee and the Landlord testified that the Tenant had agreed to put it in her name. The charges outstanding from July 25, 2017 to April 26, 2018 are for \$549.74 and the Landlord shall be awarded that amount to reimburse him for the charges that remained in his name.

The Landlord has been successful in his Application and is awarded the filing fee of \$100.00. As the tenancy is ordered to be terminated pursuant to the Notice, I am authorizing the Landlord to retain the Tenant's security deposit in the sum of \$825.00 in partial satisfaction of the monetary award:

April rent arrears	\$ 825.00
Utilities	\$ 549.74
Filing Fee	<u>\$ 100.00</u>
 TOTAL AWARD:	 \$1,474.74
 Less:	
Security Deposit	<u>(\$825.00)</u>
 BALANCE OWING:	 \$649.74

This Order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment. Copies of this order are attached to the Landlord's copy of this Decision.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** 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.

I further grant an Order for payment of \$649.74 to the Landlord by the Tenant forthwith.

The Landlord shall retain the Tenant's security deposit in the amount of \$825.00.

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 5, 2018

Residential Tenancy Branch