



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, OPR, MNR, FF

Introduction

This hearing was convened in response to cross-applications of the parties. **The tenant** sought to cancel a 10 Day Notice for Unpaid Rent (Notice to End). **The landlord** sought an Order of Possession due to unpaid rent, a Monetary Order for loss, rental arrears and recovery of the filing fee for this application.

Both parties appeared in the conference call hearing and participated with their submissions and testimony. The parties agreed to the exchange of hearing documents. The tenant acknowledged receipt of the landlord's evidence and acknowledged they did not send the landlord their evidence provided to the hearing. Regardless, the tenant provided their evidence in testimony and agreed with the landlord's accounting evidence of the arrears to the date of this hearing. The landlord agreed to my reference of the tenant's evidence. The tenant advised they are still residing in the rental unit and are not in a financial position to vacate.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Should the Notice to End be cancelled?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The evidence of the parties is that the tenancy began September 01, 2009. Rent in the amount of \$1695.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$847.50, retain in trust.

The parties agree that periodically the tenant has failed to pay all rent when due in the years of 2012 through to 2015. The parties provided complimenting accounting evidence in this respect which identified the specific months in which the rent was not paid in full. In the latter portion of July 2015 the landlord served the tenant with a Notice to End Tenancy for non-payment of rent received by the tenant on July 20, 2015, claiming the tenant owed total arrears of \$5292.00 and utilities amounting to \$107.00 which the landlord explained to be a dated *move in* fee owed by the tenant as a term of the Tenancy Agreement in 2009 - and a charge for insufficient funds incurred in June 2015. The landlord further explained the outstanding rent amount in the Notice should have been stated as \$5290.00 (vs \$5292.00) up to July 2015.

The parties agree that, inside the month of July 2015, the tenant made 5 periodic payments, inclusive of July 2015 monthly rent, resulting in a net amount of \$1795.00 toward the arrears - and the parties further agree that as of July 31, 2015 the tenant still owed \$3495.00. The parties agreed that despite the multiple payments and late effort of the tenant toward satisfying arrears it was clearly communicated between the parties that the tenancy was not being re-instated and that the landlord was clearly seeking for the tenancy to end. The parties agree that all the rent for August 2015 was not satisfied to the end of August – with a shortfall of \$1000.00. However, the parties agree that as *of the date of this hearing* the tenant ultimately satisfied the August shortfall as well as September 2015 rent, and therefore the arrears remain in the amount of \$3495.00.

Analysis

References to relevant legislation can be accessed from the Residential Tenancy

Branch website at www.gov.bc.ca/landlordtenant.

Under the circumstances I find it reasonable pursuant to **Section 68** of the Act to amend the landlord's Notice to End to state the amount of arrears as \$5290.00 (from \$5292.00)

Based on the preponderance of evidence I find that the tenant was served with a Notice to end tenancy for non-payment of rent and I find that the Notice to be valid and validly issued. The tenant did not pay the outstanding rent in full within the 5 days permitted to do so under the Act, and has not provided evidence the landlord's Notice to End should be cancelled. Therefore the tenant's application is hereby **dismissed**. As a result, based on the above facts I find that the landlord is entitled to an **Order of Possession**.

On review of the Tenancy Agreement I find that the tenant is made responsible for a moving charge. However, the agreement in this respect is vague and does not state the amount, and I am not satisfied the amount was revealed to the tenant until receiving the landlord's application. The legal doctrine of *Contra Proferentem* refers to a standard in contract law (as is a tenancy agreement) which states that if a clause in a contract appears to be ambiguous, it should be interpreted against the interests of the person who insisted that the clause be included – in this case the landlord. As a result, I find that the landlord may not enforce this aspect of the tenancy agreement and I therefore **dismiss** this portion of their claim. However, I accept that the landlord incurred a charge of \$7.00 in June 2015 for a dishonoured cheque due to insufficient funds – and I find it appropriate to award this amount.

As for the Monetary Order, I find that the landlord has established a claim for \$3495.00 in unpaid rent and \$7.00 for a bank charge. The landlord is also entitled to recovery of the \$50.00 filing fee. Under the Act an Arbitrator has authority to offset a security deposit from an award. Despite the tenancy coming to an end the landlord has not made a request for the security deposit and therefore it must be administered at the end of the tenancy in strict accordance with the Act.

Calculation for Monetary Order

Rental arrears - total	3495.00
------------------------	---------

Loss – NSF charge	7.00
Filing fee for the cost of this application	50.00
Total Monetary Award to landlord	3552.00

Conclusion

The tenant's application is **dismissed**.

I grant an Order of Possession to the landlord **effective 2 days from the day it is served on the tenant**. The tenant must be served with this **Order of Possession**.

Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I grant the landlord an Order under Section 67 of the Act for the amount of **\$3552.00**.

If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: October 05, 2015

Residential Tenancy Branch

