



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNDC MNSD FF

Introduction

This hearing dealt 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 and utilities pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant and the landlord's agent both attended this hearing. The tenant confirmed receipt of the 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") as well as the landlord's Application for Dispute Resolution with Notice of Hearing. Both parties were given a full opportunity to be heard, to present sworn testimony, and to make submissions.

Preliminary Issues

During this hearing, the tenant advised that she had applied to dispute the landlord's 10 Day Notice. On review of the materials submitted by the tenant for her own application, I note that the tenant did not attend on the date of the scheduled hearing of her application. Therefore the tenant's application to cancel the 10 Day Notice was dismissed. However, the tenant was given a full opportunity to make submissions and present evidence as well as testimony before the conclusion of this hearing. The tenant was allowed additional time to submit documentary evidence to the landlord and the Residential Tenancy Branch in order to ensure that the principles of natural justice and procedural fairness were met. The tenant did not submit documentary materials within the time frame provided to her.

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 against the tenant for rental arrears and utilities?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began on November 1, 2015 on a month to month basis. The landlord submitted a copy of the tenancy agreement indicating the rental amount, security deposit amount and the responsibility of the tenant with respect to utilities (60%). The current rental amount of \$1350.00 is payable on the first of each month. The landlord continues to hold a \$675.00 security deposit paid by the tenant at the outset of the tenancy (October 25, 2015). The landlord's agent testified that the tenant has not paid rent for four months totalling \$5400.00 and that the tenant's portion of the utilities totalling \$2478.36 are unpaid.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on July 20, 2016. The landlord testified that the tenant did not pay the July rent after receiving the 10 Day Notice. The landlord provided copies of receipts reflecting the tenant's sporadic payment of rent over the first half of 2016 (some payments made 5th, 7th, 20th). After the expiration of the 10 Day period for the tenant to pay the outstanding amount owed, the landlord applied for an Order of Possession.

As indicated above, the tenant testified that she applied to dispute the 10 Day Notice. The tenant testified that she paid June 2016 and July 2016 rent. The tenant testified that she had receipts to show she paid June and July rent. The landlord testified that she had asked the tenant to submit those receipts prior to this hearing and she did not do so. The tenant was given an opportunity to forward via email the receipts to the landlord during the hearing. The tenant did not do so. Ultimately, the tenant exited the line to submit her evidence indicating she would return to the line to conclude the hearing. The tenant did not return to the teleconference line prior to the conclusion of the hearing. While participating in the teleconference call, the tenant testified that she had not paid August 2016 and September 2016 rent because she had received the landlord's 10 Day Notice.

The landlord applied for a monetary award of \$7878.36 for the four months of unpaid rent and the unpaid utilities. During the course of the hearing, the tenant argued that a new agreement with respect to utilities had been entered into regarding the utilities.

Analysis

Based on the evidence before me, I find that the tenant failed to pay the July 2016 rent within five days of receiving the 10 Day Notice to End Tenancy. I accept the evidence of the landlord regarding unpaid rent and I note that the landlord would likely not have issued a 10 Day Notice for unpaid rent in July 2016 if the tenant only stopped paying rent *after* the issuance of the Notice on July 20, 2016. Furthermore, the 10 Day Notice created by the landlord in July 2016 indicates 2 months' rent outstanding totalling \$2700.00.

The tenant made an application pursuant to section 46(4) of the *Act* however that application was dismissed. The tenant provided insufficient evidence to support the claim that she had paid June and July 2016 rent and the tenant acknowledged in her testimony that she has not paid rent for August, September 2016 although she continues to reside in the rental unit. In accordance with section 46(5) of the *Act*, the tenant's failure to either successfully apply to dispute the landlord's 10 Day Notice or pay the outstanding amounts owed within five days led to the end of this tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by August 2, 2016. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

Based on all of the evidence provided at this hearing, I find that the landlord is entitled to receive an order for \$5400.00 in unpaid rent. I accept the uncontested evidence offered by the landlord's agent regarding unpaid rent for September 2016 and August 2016. I also accept the landlord's evidence, including the 10 Day Notice to End Tenancy as proof that the tenant failed to pay rent in June 2016 and July 2016. I am issuing the attached monetary order that includes the landlord's application for \$5400.00 in unpaid rent for June, July, August and September 2016.

The tenant provided some evidence that a new agreement with respect to utilities had been entered into with the landlord regarding the payment of utilities. Based on the tenant's submissions, I find that the landlord's agent was unable to sufficiently prove the outstanding utilities and I dismiss the landlord's application for utilities with leave to reapply.

The landlord testified that he continues to hold a security deposit of \$675.00 plus any interest from November 1, 2015 to the date of this decision for this tenancy. I will allow the landlord to retain the \$675.00 security deposit in partial satisfaction of the monetary award. No interest is payable for this period of time.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant the landlords 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 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlords as follows:

Rental Arrears for June, July, August, September \$1350.00 monthly rent x 4 months	\$5400.00
Less Security Deposit	-675.00
Recovery of Filing Fee for this application	100.00
Total Monetary Award	\$4825.00

The landlord is provided with formal Orders in the above terms. Should the tenant(s) 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: September 26, 2016

Residential Tenancy Branch