



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, CNR

Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the “Act”).

The tenant seeks:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) pursuant to section 46.

The landlord seeks:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance I confirmed that the landlord had served the 10 Day Notice and that the parties had duly served one another with their respective applications for dispute resolution.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that they had no confidence that the tenant would pay the amount that will be due for January, nor would the landlord be able to rent the unit out for January given the late date of the hearing. The tenant testified that while he has not paid the rent amount in full for the past five months he intended to pay the amount for January. As the January rent was not yet due at the time of this hearing I decline to amend the landlord’s claim to increase the

amount sought. The landlord is at liberty to file a separate application for any future losses incurred under this tenancy.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to monetary compensation for unpaid rent?

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

Background and Evidence

The parties agreed on the following facts. The month to month tenancy began in July, 2012. The current rent is \$665.00 payable on the first of the month. The tenant paid a security deposit of \$325.00 at the start of the tenancy which is still held by the landlord. The tenant continues to reside in the rental unit.

The tenant last made payment to the landlord on August 6, 2016 for the amount of \$390.00 leaving an arrear of \$275.00 for August rent. The tenant made no payment for the months of September through December. The total rental arrears as at the date of the hearing was \$2,935.00. The landlord testified that they do not expect to be in a position to rent the unit in January, as cleaning and refurbishing of the premises will be required after this longer-term tenancy.

Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant received the 10 Day Notice on November 17, 2016, and applied for dispute resolution on November 21, 2016 within the five day limit under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The landlord testified that there is a rent arrear of \$2,935.00. The tenant confirmed that he has not paid rent since the summer. I accept the evidence of the parties that there is a rental arrear of \$2,935.00. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I issue a monetary award in the landlord's favour for \$2,935.00 that includes the unpaid rent owing of \$2,935.00 for August, 2016 to December, 2016.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$325.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour. No interest is payable over this period.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour under the following terms:

Item	Amount
Rental Arrears for August 2016	\$275.00
Rental Arrears for September 2016	\$665.00
Rental Arrears for October 2016	\$665.00
Rental Arrears for November 2016	\$665.00
Rental Arrears for December 2016	\$665.00
Less Security Deposit	-\$325.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$2,710.00

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: January 5, 2017

Residential Tenancy Branch