



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities 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 there were no issues with service of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), the landlord's application for dispute resolution or either party's evidentiary materials. The tenant pointed out what he believed to be various typographic errors in the 10 Day Notice but confirmed receipt of the landlord's materials. The landlord confirmed receipt of the tenant's evidentiary materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the landlord's 10 Day Notice, the landlord's application and their respective evidence.

During the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord testified that since the application was filed there have been some payments received and additional rent becoming due. The landlord said the current rental arrears as of the date of the hearing is \$945.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as additional rent becoming due is reasonably foreseeable, I amend the landlord's Application to increase the landlord's monetary claim from \$101.22 to \$945.00.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent and utilities?

Is the landlord entitled to monetary compensation for unpaid rent and utilities?

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

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the claims and my findings are set out below.

The parties agreed on the following facts. This periodic tenancy began in June, 2015. The current monthly rent is \$920.00 payable on the first of the month. In addition the tenant is responsible for paying the electric bills directly to the municipality. If the electric utilities are not paid the landlord becomes responsible for the payment. A late fee of \$25.00 applies to all late rent payments. The tenant continues to reside in the rental unit at the time of the hearing.

The landlord testified that at the time the 10 Day Notice was issued the tenancy was in arrears by \$1,021.22, the sum of the April rent of \$920.00 and the electricity bill of \$101.22, the amount initially sought in the 10 Day Notice. The parties testified that the tenant made a payment of \$920.00 for the April rent on May 2, 2017. The tenant said that the electricity bill of \$101.22 was paid directly to the municipality at some point after receiving the 10 Day Notice. The parties said that as of the date of the hearing the tenancy is in arrears by \$945.00, the sum of the outstanding May, 2017 rent of \$920.00 and a late fee of \$25.00.

Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent and utilities or file an application for dispute resolution within five days of receiving a 10 Day Notice. In this case, the tenant confirmed he was personally served with the 10 Day Notice on April 5, 2017. I accept the evidence of the parties that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act*, nor did the tenant dispute the 10 Day Notice within that 5 day period. I accept the parties' evidence that the tenant made payment of the full rent on May 2, 2017, outside of the 5 days granted under the *Act*, and the payment was accepted for use and occupancy only. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day notice, April 15, 2017. I find that the 10 Day notice conforms to the form and content requirement of section 52 of the *Act* as it is signed and dated by the landlord, provides the rental unit address, states the effective date of the notice, and states the grounds for ending the tenancy. I do not find that the minor typographic errors pointed out by the tenant, invalidates the 10 Day notice. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the evidence of the parties that the total amount of arrear for this tenancy is \$945.00. I issue a monetary award for unpaid rent and late fee owing of \$945.00 as at May 25, 2017, the date of the hearing, pursuant to section 67 of the *Act*.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$447.50 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

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 anyone 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:

Rental Arrears for May, 2017	\$920.00
Late Fee for May, 2017	\$25.00
Filing Fee	\$100.00
Less Security Deposit	-\$447.50
Total Monetary Award	\$597.50

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: May 25, 2017

Residential Tenancy Branch