



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR CNR DRI

Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlord sought:

- an Order of Possession pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant sought:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order regarding a disputed additional rent increase pursuant to section 43

The landlord and the tenant both attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. The landlord was assisted at the hearing by T.C. for interpreting when necessary.

The tenant acknowledged that he received a copy of the Landlord's Application for Dispute Resolution by way of Canada Post Registered Mail, while the landlord acknowledged receiving the Tenant's Application for Dispute Resolution. Pursuant to section 89 of the *Act*, both parties are found to have been duly served.

The landlord testified that he sent the tenant all documentary evidence on July 20, 2017 by registered mail. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. Although the tenant disputed receiving the landlord's evidence, based on the balance of probabilities, I accept the landlord's testimony that the landlord's evidence was contained in this mailing. In accordance with sections 88 and 90 of the *Act* I find the tenant was deemed served with the landlord's documentary evidence on July 25, 2017, the fifth day after the landlord's registered mailing.

The tenant did not submit any documentary evidence in support of their own application.

The landlord testified that he sent the 10 Day Notice to the tenant by way of registered mail on July 08, 2017. The tenant confirmed receipt of the 10 Day Notice, identifying \$2,925.00 in rent owing for this tenancy, and in accordance with section 88 of the *Act* I find that the tenant was deemed served on July 13, 2017.

At the outset of the hearing the landlord acknowledged that \$975.00 of the amount owing on the 10 Day Notice is for a security deposit. The landlord testified that they are currently retaining a security deposit equal to half the monthly rent. The landlord testified that the tenant agreed to pay an additional security deposit but admitted that there are no pets at the rental unit. I informed the landlord that section 19 of the *Act* establishes that, "A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of half of one month's rent payable under the tenancy agreement." The landlord withdrew this portion of their monetary claim.

In the details of the dispute on the Tenant's Application, the tenant indicates that they are disputing the extra damage deposit being requested from the landlord. As the landlord has withdrawn their request for an additional security deposit, I dismiss the tenant's request to dispute a rent increase as it is no longer relevant to the proceedings.

The landlord testified that the tenant is still in the rental unit and has not made any payments toward the tenancy since the 10 Day Notice was issued. The landlord amended his application for a monetary award from \$2,925.00 to \$3,900.00 to reflect the tenant's failure to pay \$1,950.00 in monthly rent for July 2017 and August 2017. I allowed this amendment to the landlord's monetary application as it is clear that the tenant should know that rent for the rental unit continues to be owed since the landlord submitted his application for dispute resolution.

The landlord's amended application for a monetary award of \$3,900.00 is for the following items:

Item	Amount
Unpaid July 2017 Rent	1,950.00
Unpaid August 2017 Rent	1,950.00
Amended Requested Monetary Order	\$3,900.00

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?

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

The landlord gave written evidence that this tenancy began on May 1, 2017, with a monthly rent of \$1,950.00 due on the first day of the month. As noted above, the landlord testified that he continues to retain a \$975.00 security deposit in trust.

A copy of the signed 10 Day Notice, dated July 08, 2017, with an effective date of July 08, 2017, was included in the landlord's evidence. In accordance with the provisions of the *Act*, this effective date automatically corrects to July 23, 2017.

The landlord testified that the tenant has brought someone else into the rental unit who is not the landlord's tenant and the locks have been changed on the garage. The landlord testified that it was his understanding that the tenant was going to bring his family to live in the rental unit, not the person who is currently living in the rental unit.

The tenant testified that he had a verbal agreement with the landlord to pay the rent late due to banking issues surrounding Canada Day and an injury that the tenant suffered at work. The landlord did not acknowledge that this agreement was in place.

The tenant testified that the tenant's boss is currently living in the rental unit and that the tenant's boss tried to pay the landlord rent but the landlord refused it. The tenant testified that the rental unit is not suitable for his family to live in at this point.

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Although the tenant testifies that the tenant's boss tried to pay rent directly to the landlord, I find that the landlord was under no obligation to accept any money from this person as the landlord had no legal contract or relationship with the tenant's boss. The tenancy agreement provided as evidence only indicates an agreement between the tenant and the landlord and any rent paid to the landlord would have to come directly from the tenant unless otherwise agreed to by the landlord. I further find that there is no evidence in front of me that the landlord allowed or agreed to the tenant paying the monthly rent late due to any circumstances.

For these reasons, the tenant's application to cancel the 10 Day Notice is dismissed.

I accept the evidence that the tenant failed to pay any rent within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the monthly rent within five days led to the end of this tenancy on July 23, 2017, the corrected effective date on the 10 Day Notice. In this case, the tenant and anyone on the premises were required to vacate the premises by July 23, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Based on the written evidence and sworn testimony of the landlord and the tenant, I find that the landlord is entitled to a monetary award of \$3,900.00 for unpaid rent owing for this tenancy for July 2017 and August 2017.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I dismiss the tenant's Application in its entirety.

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

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and to retain the tenant's security deposit:

Item	Amount
Unpaid July 2017 Rent	1,950.00
Unpaid August 2017 Rent	1,950.00
Less Security Deposit	-975.00
Total Monetary Order	\$2,925.00

The landlord is provided with this Order in the above terms and 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 Orders 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: August 21, 2017

Residential Tenancy Branch