



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING ADVISORY ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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 pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or part of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 15 minutes. The landlord was represented by its agent MH (the "landlord") who attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, (the "10 Day Notice") was served on the tenant on June 5, 2017 by posting a copy on the rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on June 8, 2017, three days after posting.

The landlord testified that the landlords' application for dispute resolution dated June 22, 2017 was served on the tenant on that date by registered mail. The landlord provided a Canada Post tracking number as evidence of service. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on June 27, 2017, five days after its mailing.

At the outset of 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 some payment was received and the total arrears including rent owing and late fees as of the date of the hearing is \$1,237.74. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as the total arrears changing with payment can be reasonably foreseen, I

amend the landlord's Application to decrease the landlord's monetary claim from \$1,956.58 to \$1,237.74.

Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation for unpaid rent and loss as claimed?

Is the landlord entitled to retain all or a portion of the tenant's security deposit?

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

Background and Evidence

The landlord provided undisputed sworn testimony regarding the following facts. This month to month tenancy began in 2007. A security deposit of \$335.00 was paid at the start of the tenancy and is still held by the landlord. The current monthly rent is \$478.00 payable on the first of the month. The tenant continues to reside in the rental unit as of the date of the hearing.

The landlord testified that at the time the 10 Day Notice was issued the tenancy was in arrears by \$1,956.58, the amount initially sought in the 10 Day Notice. The landlord testified that the tenant has made some payments since the 10 Day Notice was issued, for which the landlord has issued receipts indicating the payments were accepted for use and occupancy only. The landlord testified that the rental arrear as of the date of the hearing is \$1,237.74.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenant was obligated to pay the monthly rent in the amount of \$478.00. I accept the evidence before me 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. 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, June 18, 2017. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the landlords' undisputed evidence that the total amount of arrears for this tenancy is \$1,237.74. I issue a monetary award for unpaid rent owing of \$1,237.74 as at September 1, 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 \$335.00 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 in the amount of \$1,002.74 under the following terms, which allows the landlord to recover unpaid rent and the filing fee for their application, and to retain the tenant's security deposit:

Item	Amount
Rent Arrears	\$1,237.74
Filing Fee Recovery	\$100.00
Less Security Deposit	-\$335.00
Total Monetary Order	\$1,002.74

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: September 5, 2017

Residential Tenancy Branch