



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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 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;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord provided undisputed affirmed testimony that the tenant was served with the notice of hearing package via Canada Post Registered Mail on July 17, 2017. The tenant provided affirmed testimony confirming receipt of this package. The landlord provided undisputed affirmed testimony that the tenant was served with the 1st submitted documentary evidence package via Canada Post Registered Mail on July 21, 2017. The tenant provided affirmed testimony confirming receipt of this package. The landlord provided testimony that the 2nd documentary evidence package was served to the tenant via Canada Post Registered Mail on August 14, 2017. The tenant disputes that no such package has been received. The landlord was unable to provide any particulars or proof of service regarding service of this package and chose to withdraw this evidence package from consideration. As such, the landlord's 2nd documentary evidence package is excluded from consideration in this decision. The tenant did not submit any documentary evidence. I accept the undisputed evidence of both parties find that both parties have been properly served as per sections 88 and 89 of the Act.

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 for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain the security deposit?

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 applicant's claim and my findings are set out below.

This tenancy began on August 1, 1998 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated July 27, 1998.

Both parties agreed that a \$300.00 security deposit was paid by the tenant.

The landlord seeks an order of possession, a monetary order for unpaid rent, recovery of the filing fee and to offset the claim against the held security deposit.

Both parties agreed that the landlord served the tenant with the 10 Day Notice to End Tenancy issued for Unpaid Rent (the 10 Day Notice) dated July 5, 2017 by posting it to the rental unit door on July 5, 2017 as shown by the submitted copy of the proof of service document dated July 5, 2017. The 10 Day Notice sets out that the tenant failed to pay rent of \$1,272.00 that was due on July 1, 2017 and provides for an effective end of tenancy date of July 15, 2017.

The tenant clarified that the amount owed was an accrual of rental arrears and agrees to the amount claimed. The tenant also stated that she still occupies the rental unit and just wishes to go through the eviction process.

The landlord stated that as of the date of this hearing the tenant owes rent totalling, \$2,108.00. Both parties agreed that just prior to the hearing date the tenant had made a partial rent payment of \$250.00 for which a receipt was issued to the tenant for "use and occupancy only". The tenant confirmed in her direct testimony that the amount claimed of \$2,108.00 was correct as it included unpaid rent for August and September of 2017.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

Both parties confirmed that the tenant was served with the 10 Day Notice dated July 5, 2017. The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the

tenant to vacate the premises by July 15, 2017. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The tenant has confirmed the landlord's claim of unpaid rent totalling, \$2,108 as of the date of this hearing. As such, I find that the landlord has established a claim for the amount of \$2,108.00.

The landlord having been successful is entitled to recovery of the \$100.00 filing fee. I also authorize the landlord to retain the \$335.82 (combined security deposit and accrued interest) in partial satisfaction of the claim.

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$1,872.18.

These orders must be served upon the tenant. Should the tenant fail to comply with the orders, the orders may be filed in the Supreme Court of British Columbia and Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those courts.

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 29, 2017

Residential Tenancy Branch