



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, OPC, MNDC, FF

Introduction

This participatory hearing was convened after the issuance of an August 08, 2017, interim decision by an Adjudicator. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's (RTB) direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord's application to a participatory hearing for the following:

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

The tenant did not attend this hearing, although I waited until 9:45 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. An agent of the landlord, C.L., (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

On August 17, 2017, the landlord submitted an Amendment to an Application for Dispute Resolution to the RTB to request the unpaid rent for August 2017 and September 2017 and to request recovery of the filing fee for this application.

The landlord entered into evidence witnessed documentary evidence that he personally handed the tenant a copy of the Landlord's Application for Dispute Resolution along with a copy of all documentary evidence as a part of the direct request proceeding package on July 26, 2017. In accordance with sections 88 and 89 of the *Act*, I find the tenant was duly served with these documents.

The landlord testified that the original Notice of this Hearing was personally handed to the tenant on August 11, 2017. The landlord testified that the landlord's Amendment to an Application for Dispute Resolution to request the unpaid rent for August 2017, September 2017 and recovery of the filing fee was also personally handed to the tenant on August 11, 2017. In accordance with section 89 of the *Act*, I find that the tenant was duly served with the Notice of Hearing document and the Amendment to an Application for Dispute Resolution that was received by the RTB on August 17, 2017.

On August 24, 2017, the landlord submitted a second Amendment to an Application for Dispute Resolution to the RTB to request an Order of Possession for cause pursuant to section 55 of the *Act* and compensation for a monetary loss or other money owed for damage to the door of the rental unit pursuant to section 67 of the *Act*.

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

I find that the Amendment of an Application for Dispute Resolution that was submitted to the RTB on August 24, 2017, is for issues that are not related to the issue of unpaid rent that this reconvened hearing was initially scheduled to hear. For this reason, I dismiss the issues related to the landlord's Amendment of an Application for Dispute Resolution dated August 24, 2017, with leave to reapply. Leave to reapply is not an extension of any applicable time limit.

The landlord testified that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was personally handed to the tenant on July 17, 2017. In accordance with section 88 of the *Act*, I find that the 10 Day Notice, identifying \$420.00 in rent owing for this tenancy, was duly served to the tenant.

At the outset of the hearing the landlord testified that the tenant is still in the rental unit and has not made any payments towards tenancy.

The landlord's amended application for a monetary award of \$1,360.00 is for the following items:

Item	Amount
Unpaid July 2017 Rent	\$420.00
Unpaid August 2017 Rent	420.00
Unpaid September 2017 Rent	420.00
Filing fee for this application	100.00
Amended Requested Monetary Order	\$1,360.00

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?
Is the landlord entitled to a monetary award for unpaid rent?
Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord gave written evidence that this tenancy began on April 22, 2017, with a monthly rent of \$420.00. The landlord gave undisputed testimony that rent is due on the first day of the month. The landlord testified that he continues to retain a \$210.00 security deposit in trust.

A copy of the signed 10 Day Notice, dated July 17, 2017, with an effective date of July 27, 2017, was included in the landlord's evidence.

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*.

Based on the landlord's undisputed evidence and testimony, I find the tenant failed to pay any rent within five days of receiving the 10 Day Notice and did not make an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on July 27, 2017, the 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 27, 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 landlord's undisputed written evidence and sworn testimony, I find the landlord is entitled to a monetary award of \$1,260.00 for unpaid rent owing for this tenancy for the period from July 2017 to September 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.

As the landlord has been successful in this application, I also allow them to recover their \$100.00 filing fee from the tenant.

Conclusion

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	\$420.00
Unpaid August 2017 Rent	420.00
Unpaid September 2017 Rent	420.00
Filing Fee for this application	100.00
Less Security Deposit	-210.00
Total Monetary Order	\$1,150.00

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: September 06, 2017

Residential Tenancy Branch