



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNR, MNSD, LRE, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

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

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- authorization to change the locks to the rental unit pursuant to section 70;
- authorization to recover the security deposit for this tenancy from the landlord pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 10 minutes. The landlord 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 was assisted by his wife, BA.

The landlord testified that he served the 10 Day Notice on the tenant on July 8, 2017 by posting on the rental unit door. In accordance with section 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on July 11, 2017, three days after posting.

The landlord testified that he served the landlord's application for dispute resolution dated August 1, 2017 on the tenant by registered mail sent on that same date. 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 August 6, 2017, five days after its mailing.

At the At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed the tenants have failed to pay the August and September rent amount and that the total arrears as of the date of the hearing is \$5,300.00. 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 monetary claim from \$700.00 to \$5,300.00.

Issue(s) to be Decided

Should the 10 Day Notice be set aside? If not is the landlord entitled to an Order of Possession for unpaid rent?

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

Should the tenant be entitled to change the locks of the rental unit?

Is the tenant entitled to recover the security deposit for this tenancy?

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

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This fixed term tenancy began in May, 2017. The rent is \$2,300.00 payable on the first of each month. A security deposit of \$1,150.00 was paid by the tenant at the start of the tenancy and is still held by the landlord. The tenant occupies 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 \$1,300.00, the amount sought in the 10 Day Notice. The landlord said the tenant made a payment of \$600.00 on July 17, 2017 and that there remained an arrear of \$700.00. Since the 10 Day Notice was issued the tenant has failed to pay the rent for the months of August and September and the total arrear for this tenancy as of the date of the hearing is \$5,300.00.

Analysis

The tenant did not attend the hearing which was scheduled by conference call at 9:30am. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Consequently I dismiss the tenant's application without leave to reapply.

Section 55 of the *Act* provides that:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application, and I find that the landlord's 10 Day Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provide the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end, I find that the landlord is entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

I find that the tenant was obligated to pay the \$2,300.00 monthly rent. I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$5,300.00. I issue a monetary award in the landlord's favour for unpaid rent of \$5,300.00 as at September 7, 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 security deposit of \$1,150.00 in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

The tenant's application is dismissed.

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 \$4,150.00 under the following terms, which allows the landlords to recover unpaid rent for their application:

Item	Amount
Unpaid Rent July	\$700.00
Unpaid Rent August	\$2,300.00
Unpaid Rent September	\$2,300.00
Less Security Deposit	-\$1,150.00
Total Monetary Order	\$4,150.00

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 7, 2017

Residential Tenancy Branch