



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF CNR ERP FF LRE OLC RP RR

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt with applications from both parties:

The landlord applied for:

- an Order of Possession pursuant to section 46 of the *Act* for unpaid rent or utilities;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent and utilities; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant applied for:

- cancellation of the landlord's notice to end tenancy pursuant to section 55;
- an Order for the landlord to perform emergency repairs pursuant to section 33 of the *Act*;
- a return of the filing fee pursuant to section 72 of the *Act*;
- an Order suspending the landlord's right to enter the rental unit pursuant to section 70 of the *Act*;
- an Order for the landlord to comply with the *Act* pursuant to section 62;
- an Order for the rent to be reduced for repairs, services or facilities agreed upon but not provided pursuant to section 65 of the *Act*.

Only the landlord attended the hearing. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave undisputed testimony that a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities ("10 Day Notice") was given to the tenant's son, E.P. in person on August 3, 2017. Pursuant to sections 88 & 90 of the *Act*, the tenant is found to have been served with the same day of its service, August 3, 2017.

As part of her evidentiary package, the landlord produced a copy of the Canada Post registered mail receipt and tracking number. This receipt demonstrates that the tenant was sent a copy of the landlord's application for dispute resolution and monetary order by way of Canada Post registered mail on August 22, 2017. Pursuant to sections 88, 89

and 90 of *Act*, the tenant is found to have been served with the documents on August 27, 2017, five days after their mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Can the landlord recover the unpaid rent?

Is either party entitled to a return of the filing fee?

Background and Evidence

Undisputed testimony provided to the hearing by the landlord explained that this tenancy began on September 20, 2016. The landlord stated that the tenant moved out on approximately August 12, 2017. A copy of the Residential Tenancy Agreement submitted to the hearing as part of the tenant's application for dispute resolution shows that this was a fixed term tenancy that began on September 1, 2016 and was set to end on August 31, 2017. At the conclusion of the fixed term, it is indicated on the tenancy agreement that the tenancy was to continue on a month-to-month basis. In the section provided on the tenancy agreement marked, "At the End of this fixed length of time the tenancy ends and the tenant must move out of the residential unit" only the landlord has initialed the box agreeing to this.

During the course of the hearing, the landlord explained that the tenant rented the unit for his own use, telling her that he would be commuting to Vancouver periodically. Following the parties agreeing to the terms of a tenancy agreement, the landlord said that she soon found out that the tenant was no longer in occupation of the unit and had moved his three children aged, 19, 16 and 11 into the unit. She said repeated attempts to speak with the tenant about this proved fruitless as his phone was disconnected.

The landlord is seeking an Order of Possession for unpaid rent along with a Monetary Order representing the unpaid rent for August and September 2017. When asked why she was pursuing rent for September 2017, the landlord stated that a large number of items remained in the rental unit proving it to be un-rentable. She stated she was awaiting the outcome of her arbitration before taking any action against the tenant's belongings.

Analysis

The tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. While the tenant has made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice disputing the end of tenancy, the tenant failed to attend the hearing to provide any evidence explaining why rent

remained unpaid. I find the 10 Day Notice issued to the tenant to be valid and note that it required the tenant to vacate the premises by August 13, 2017. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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. In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award.

The landlord explained that the tenant had not paid for August or September 2017. Section 57(3) of the *Act* notes that, "A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended." I find that while the tenant had vacated the rental unit, a large number of personal items remained in the suite, creating confusion as to whether or not the tenancy had truly ended. The tenant and occupants provided no indication to the landlord that they were vacating the rental unit prior to their departure.

The tenant failed to attend the hearing, and no evidence was submitted by the tenant explaining why rent remained unpaid. I find that the landlord has suffered a loss under this tenancy and pursuant to section 67 of the *Act* I find that the landlord is entitled to receive a monetary award for unpaid rent of \$2,400.00.

As the landlord was successful in her application, she may recover the \$100.00 filing fee from the tenant.

Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's \$600.00 security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

The landlord is directed to consult the website of the *Residential Tenancy Branch* which contains information on steps that must be taken when dealing with abandoned property.

<http://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/ending-a-tenancy/items-left-behind>

As the tenant did not appear at the hearing to present any evidence concerning his claim, the entirety of his application is dismissed.

Conclusion

I make a Monetary Order of \$1,900.00 in favour of the landlord as follows:

Item	Amount
Unpaid rent for August 2017	\$1,200.00
Unpaid rent for September 2017	1,200.00
Return of Filing Fee	100.00
Retention of Security Deposit	(-600.00)
Total =	\$1,900.00

The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

I grant an Order of Possession to the landlord effective two days after service of this Order on the tenant. Should the tenant fail to comply with this Order, this Order may be enforced as an Order of the Supreme Court of British Columbia.

The tenant's application is dismissed in its entirety.

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 27, 2017

Residential Tenancy Branch