



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR, MNRL-S, FFL

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 sections 46 and 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord's agent V.N. (the landlord) and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant acknowledged receipt of the Landlord's Application for Dispute Resolution (the Application) and evidentiary package sent by Canada Post Registered Mail on September 28, 2017. Pursuant to section 88 and 89 of the *Act*, I find the tenant has been duly served with these documents.

The tenant confirmed receipt of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice), which was personally handed to him on September 08, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the 10 Day Notice.

The tenant confirmed that they did not submit any evidence.

At the outset of the hearing the landlord testified that the tenant is still in the rental unit.

The landlord testified that on September 28, 2017, the tenant paid \$500.00 towards the total amount owing on the 10 day Notice. The landlord sought to increase their monetary claim from \$2,000.00 to \$3,500.00 to reflect the tenant's failure to pay \$2,500.00 in monthly rent for October 2017, the additional month of unpaid rent waiting for this hearing. Residential Tenancy Rule of Procedure 4.2 states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. I allow the amendment as this was clearly rent that the tenant would have known about and resulted since the landlord submitted their Application for Dispute Resolution.

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 retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

The landlord gave written evidence that this tenancy began on February 01, 2017, with a monthly rent of \$2,500.00, due on the first day of each month. The landlord testified that they are currently retaining a security deposit in the amount of \$1,250.00.

The landlord entered into written evidence the 10 Day Notice identifying \$3,500.00 in unpaid rent, dated September 08, 2017, with a stated effective date of September 19, 2017.

The landlord's amended application for a monetary award of \$3,500.00 is for:

- \$1,000.00 for the balance of the September 2017 unpaid rent; and
- \$2,500.00 for the October 2017 unpaid rent.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During this hearing, the parties reached an agreement to settle their dispute.

Both parties agreed to the following terms of a final and binding resolution of the landlord's application and the issues in dispute arising out of this tenancy at this time and that they did so of their own free volition and without any element of coercion:

1. The tenant agreed to pay **\$3,600.00** to the landlord for the \$100.00 filing fee for this application and the \$3,500.00 in outstanding rent for September 2017 and October 2017 by the end of the business day on October 25, 2017, which the landlord agreed to accept.
2. Both parties agreed that if this payment of \$3,600.00 is not received by the landlord on October 25, 2017, this tenancy will end by 1:00 p.m. on October 26, 2017, by which time the tenant agreed they will vacate the rental unit.
3. Both parties agreed that in the event that the tenant complies with the monetary terms of this settlement as outlined above in Clause 1, the tenancy will continue until ended in accordance with the *Act*.
4. Both parties agreed that these particulars comprise the full settlement of all aspects of the landlord's current application arising out of the 10 Day Notice issued on September 08, 2017.

Conclusion

Should the tenant fail to abide by the terms of Clause 1 of the above-noted settlement agreement reached between the parties, and as discussed at the hearing, I grant an Order of Possession to the landlord effective **on October 26, 2017, after service of this Order** on the tenant. The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible after a failure to comply with the terms of Clause 1 of the above noted settlement agreement. Should the tenant or any occupant 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.

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlord's favour in the amount of \$3,600.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenant does not abide by Clause 1 of the above settlement. The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of

these Orders as soon as possible after a failure to comply with the terms of the above settlement agreement. Should the tenant fail to comply with these Orders, these Orders 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: October 26, 2017

Residential Tenancy Branch