



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC MNR OPR CNL CNR O

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 47 of the *Act* for Cause;
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant applied for:

- cancellation of the landlord's notices to end tenancy pursuant to section 55; and
- other unspecified relief.

Both the landlord and the tenant appeared at the hearing. Both the landlord and the tenant were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Both parties confirmed receipt of each other's applications for dispute resolution by way of Canada Post Registered Mail. Pursuant to section 89 of the *Act*, I find both parties to have been served with each other's applications for dispute resolution.

The tenant confirmed that he had received a 10 Day Notice for unpaid rent on July 25, 2017 by way of Canada Post Registered Mail, and a 1 Month Notice for repeated late payments of rent by way of Canada Post Registered Mail on August 8, 2017. Pursuant to section 88 of the *Act*, I find that the tenant was served with both notices in accordance with the *Act*.

Issue(s) to be Decided

Can the tenant cancel the notices to end tenancy? If not, should an Order of Possession be granted?

Is the landlord entitled to a monetary award?

Can the landlord recover the filing fee related to her application?

Background and Evidence

The landlord explained that this tenancy began on December 1, 2016. It was for a fixed length of 15.5 months and was set to end on March 14, 2018. Rent of \$1,250.00 was due on the 15th of each month and despite being written in the tenancy agreement, a security deposit of \$625.00 was not paid at the outset of the tenancy.

The landlord said she issued a 10 Day Notice for unpaid rent, along with a 2 Month Notice for landlord's use of property on July 25, 2017. Following a change in personal circumstances the landlord altered her plans and withdrew the 2 Month Notice served on the tenant. The landlord explained that she wished to enforce the 10 Day Notice, as rent of \$850.00 due on July 15, 2017 continued to be unpaid. In addition to these notices, the landlord issued a 1 Month Notice to End Tenancy for Cause on August 8, 2017 for repeated late payments of rent. The landlord stated that rent had been late every month of the tenancy except for April 2017. The tenant did not deny this, and explained that he had been laid off from his job and had trouble balancing his rent payments with his search for a new rental unit.

On August 28, 2017 the landlord amended her application for dispute resolution to reflect a monetary award of \$3,550.00. This figure represented unpaid rent for July 2017 of \$850.00, along with unpaid rent for August and September 2017 of \$2,500.00 and a return of two separate filing fees.

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 disputed the 10 Day Notice, little evidence was

presented at the hearing as to why this rent remained unpaid. In accordance with section 46(5) of the *Act*, the tenant's failure to pay rent on August 15, 2017 has led to the end of this tenancy. No evidence was presented at the hearing demonstrating that the tenant had been granted an order from an arbitrator with the *Residential Tenancy Branch* that rent did not have to be paid. In this case, this required the tenant to vacate the premises by August 5, 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 \$850.00 in rent for July 2017 and had failed to pay rent in its entirety for August and September 2017. In addition, the landlord sought a return of her filing fees.

During the hearing, the tenant acknowledged that rent remained outstanding for this time period. I find that the landlord has suffered a loss as a result of this unpaid rent 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 \$3,350.00.

As the landlord was successful in her applications, she may recover the filing fees from the tenant.

Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. 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 make a Monetary Order of \$3,550.00 in favour of the landlord as follows:

Item	Amount
Partial Unpaid rent for July 2017	\$850.00
Unpaid rent for August 2017	1,250.00
Unpaid rent for September 2017	1,250.00
Return of Filing Fee	100.00
Return of Filing Fee	100.00
Total =	\$3,550.00

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: October 3, 2017

Residential Tenancy Branch