



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

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 section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

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

The landlord testified that the Landlord's Application for Dispute Resolution (the Application) and evidentiary package were personally served to the tenant on September 07, 2017. The tenant confirmed receiving these documents. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the Application and evidentiary package.

The landlord testified that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was personally served to the tenant on August 10, 2017. The tenant confirmed receiving the 10 Day Notice, identifying \$1,901.32 in unpaid rent. In accordance with section 88 of the *Act*, I find the tenant was duly served with the 10 Day Notice.

At the outset of the hearing the landlord testified that the tenant is still in the rental unit. The landlord testified that on August 23, 2017, the tenant paid the full amount owing on the 10 Day Notice. The landlord also testified that the rent for October 2017 has not been paid as of the hearing date. The landlord requested to amend their application for a monetary award from \$1,901.32 to \$1,450.00, for October 2017 unpaid rent and the filing fee for this application.

The tenant confirmed that they did not submit any evidence.

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

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord gave written evidence that this tenancy began on March 15, 2016, with a monthly rent of \$1,350.00 due on the first day of each month. The landlord testified that they continue to retain \$1,015.00 for a security and pet deposit.

A copy of the signed 10 Day Notice, dated August 10, 2017, with an effective date of August 20, 2017, was included in the landlord's evidence.

The landlord submitted into evidence a Monetary Order Worksheet showing the rent owing and paid for this tenancy.

The landlord also submitted into evidence a letter, dated August 30, 2017, offering the tenant to stay for the month of September 2017 and half of the month of October 2017. In this letter, the landlord proposes for the tenant to vacate the unit by October 15, 2017, if the tenant pays the filing fee for this application and half a month's rent for October 2017. The landlord signed this document and wrote a note at the bottom that the tenant would not sign the document.

The landlord testified that the tenant has been delinquent with their rent for a number of months along with numerous other issues with the tenancy. The landlord testified that they would like to end the tenancy.

The tenant testified that they have had financial difficulties arising from family issues. The tenant testified that they have not paid the rent for October 2017 as they were

waiting to find out what would happen with this hearing. The tenant testified that they will not be able to move out of the rental unit for at least four months.

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 evidence and the testimony of both parties, 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 August 20, 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 August 20, 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 evidence and the testimony of both parties, I find the landlord is entitled to a monetary award of \$1,350.00 for October 2017 rent.

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

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.

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, to recover the filing fee and to retain the tenant's security deposit:

Item	Amount
Unpaid October 2017 rent	\$1,350.00
Less Security Deposit	-1,015.00
Filing fee for this Application	100.00
Total Monetary Order	\$435.00

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: October 16, 2017

Residential Tenancy Branch