



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNR

Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlords sought:

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

The tenant sought:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;

The tenant did not attend this hearing, although I waited until 1:42 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. Landlord P.G. attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Landlord P.G. (the landlord) stated that he would be representing the interests of both landlords in this matter.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of any evidence or submissions from the tenant, I order the Tenant's Application dismissed, without liberty to reapply.

The landlord testified that the Landlords' Application for Dispute Resolution (the Landlords' Application), and evidentiary package were sent to the tenant by way of registered mail on September 01, 2017. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88

and 89 of the *Act*, I find that the tenant was deemed served with the Landlords' Application and evidentiary package on September 06, 2017, five days after its mailing.

At the outset of the hearing the landlord sought to increase their monetary claim from \$2,800.00 to \$5,600.00 to reflect the tenant's failure to pay \$1,400.00 in monthly rent for September 2017 and October 2017, the additional months 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.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a monetary award for unpaid rent?

Background and Evidence

The landlord gave written evidence that this tenancy began on June 01, 2017, with a monthly rent of \$1,400.00 due on the first day of the month. The landlord testified that they continue to retain a \$700.00 security deposit.

A copy of the signed 10 Day Notice identifying \$2,800.00 in rent owing for this tenancy, dated August 21, 2017, with an effective date of September 04, 2017, was included in the landlord's evidence. The landlord entered into evidence a signed and witnessed Proof of Service document attesting to the fact that the 10 Day Notice was sent by registered mail to the rental unit at 2:00 p.m. on August 21, 2017. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with section 88 of the *Act* I find that the 10 Day Notice was deemed served to the tenant on August 26, 2017, five days after its mailing.

The landlord testified that the tenant is still in the rental unit and has not made any payments toward the tenancy since the 10 Day Notice was issued.

The landlords' amended application for a monetary award of \$5,600.00 is for the following items:

Item	Amount
Unpaid July 2017 Rent	\$1,400.00

Unpaid August 2017 Rent	1,400.00
Unpaid September 2017 Rent	1,400.00
Unpaid October 2017 Rent	1,400.00
Amended Requested Monetary Order	\$5,600.00

Analysis

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(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.

I find that the 10 day Notice is in compliance with section 52 of the *Act*. Based on my decision to dismiss the tenant's application for dispute resolution and in accordance with sections 55(1) and 53(2) of the *Act*, I find that this tenancy ended on the corrected effective date of the 10 Day Notice, September 05, 2017. In this case, the tenant and anyone on the premises were required to vacate the premises by September 05, 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. Based on the written evidence and undisputed affirmed testimony, I find that the landlord is entitled to a monetary award of \$5,600.00 for unpaid rent owing for this tenancy for July 2017, August 2017, September 2017 and October 2017.

Although the Landlords' Application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlords 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 dismiss the Tenant's Application in its entirety, without leave to reapply.

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant(s). 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.

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlords' favour under the following terms, which allows the landlords to recover unpaid rent and to retain the tenants' security deposit:

Item	Amount
Unpaid July 2017 Rent	\$1,400.00
Unpaid August 2017 Rent	1,400.00
Unpaid September 2017 Rent	1,400.00
Unpaid October 2017 Rent	1,400.00
Less Security Deposit	-700.00
Total Monetary Order	\$4,900.00

The landlords are provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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 20, 2017

Residential Tenancy Branch