



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-M FFL

Introduction

This participatory hearing was convened after the issuance of an October 04, 2017, interim decision by an Adjudicator. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's (RTB) direct request proceedings, as had been originally requested by the landlord. Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. The Adjudicator reconvened the landlord's application to a participatory hearing for the following:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*;
- a monetary order for unpaid rent pursuant to section 67 of the *Act*; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The tenant did not attend this hearing, although I waited until 1:45 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

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.

The landlord testified that he sent the tenant a copy of the notice of this adjourned hearing by registered mail on October 13, 2017. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the notice of this hearing on October 18, 2017, the fifth day after its registered mailing.

The landlord provided written evidence that the Landlord's Application for Dispute Resolution (the Application), along with all supporting evidence, was served to the tenant by way of registered mail on October 02, 2017 as a part of the direct request proceeding package. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find the tenant was deemed served with the Application and supporting evidence on October 07, 2017.

The landlord entered into evidence a signed and witnessed Proof of Service Document attesting to the fact that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted to the door of the rental unit on September 08, 2017. In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was deemed served to the tenant on September 11, 2017.

The landlord requested to amend his application for a monetary award due to rent and utilities owing since the 10 Day Notice was issued to the tenant. Residential Tenancy Branch 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 allowed this amendment to the landlord's monetary application for additional rent as it is clear that the tenant would have known that rent for the rental unit had become owing since the landlord submitted his application for dispute resolution.

I will not allow the amendment for utility charges as I find that no amount for utilities owed was listed on the 10 Day Notice served to the tenant or on the Application. I further find that an amendment to add utility charges may prejudice the tenant as they did not know this Application would also consider the unpaid utility charges.

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 from the tenant?

Background and Evidence

The landlord gave written evidence that this tenancy began on August 1, 2017, with a monthly rent of \$1,250.00 due on the first day of each month. The landlord testified that he continues to retain a \$625.00 security deposit in trust.

A copy of the signed 10 Day Notice dated September 08, 2017, identifying \$1,250.00 in rent owing for this tenancy, with an effective date of September 18, 2017, was included in the landlord's evidence.

The landlord testified that the tenant is still in the rental unit. The landlord submitted that \$1,250.00 was paid on the tenant's behalf towards the amount owing on the 10 Day Notice on September 17, 2017, and that no money has been paid to the landlord since.

The landlord's amended application for a monetary award of \$2,950.00 is for \$1,250.00 in unpaid monthly rent for October 2017 and November 2017.

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 undisputed testimony, 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. I find the failure of the tenant to take either of these actions within five days led to the end of this tenancy on September 21, 2017, the corrected effective date on the 10 Day Notice pursuant to sections 46(5) and 53(2) of the *Act*. In this case, the tenant and anyone on the premises were required to vacate the premises by September 21, 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 undisputed written evidence and affirmed testimony, I find that the landlord is entitled to a monetary award of \$2,500.00 for unpaid rent owing for this tenancy for October 2017 and November 2017.

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

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

Item	Amount
Unpaid October 2017 Rent	1,250.00
Unpaid November 2017 Rent	1,250.00
Less Security Deposit	-625.00
Filing Fee for this Application	100.00
Total Monetary Order	\$1,975.00

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: November 15, 2017

Residential Tenancy Branch