



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR OPR FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent and utilities, pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

Both parties 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 confirmed receipt of the landlord's application and evidence. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenant was duly served with copies of the landlord's Application and evidence. The tenant did not submit any written evidence for this hearing.

The tenant confirmed receipt of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), which was posted on his door on August 18, 2017, with an effective date of August 28, 2017. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the 10 Day Notice on August 21, 2017, three days after its posting.

The landlord confirmed at the beginning of the hearing at the tenant has paid all outstanding rent and was no longer seeking a monetary order for unpaid rent. Accordingly this portion of the landlord's application was withdrawn.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

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

Background and Evidence

This month-to-month tenancy began on September 1, 2015, with monthly rent set at \$1,900.00, payable on the first of the month. A \$950.00 security deposit was paid on November 23, 2016, which the landlord still holds.

The landlord issued the 10 Day Notice on August 18, 2017 as the tenant had not paid \$5,700.00 in outstanding rent, which was the balance accrued over three months. The tenant does not dispute that he was in arrears, and made partial payments towards the outstanding balance as follows: \$200.00 on August 25, 2017, \$500.00 on September 8, 2017, \$400.00 on September 18, 2017, \$400.00 on September 27, 2017, \$400.00 on October 5, 2017, \$200.00 on October 12, 2017, \$400.00 on October 17, 2017, and on subsequent dates until the balance was paid in full. The landlord indicated that there was no outstanding balance at the time of the hearing, and the tenant testified that as of November 2017 he has made payments on time.

The landlord testified in the hearing that the tenant had a history of making only partial payments, and not on time as required by the *Act*. The landlord indicated he was seeking to obtain an Order of Possession as well as recover the filing fee.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant did not dispute the fact that he had failed to pay the full outstanding rent within five days of being deemed to have received the 10 Day Notice. The tenant made his first partial payment following the receipt of the 10 Day Notice on August 25, 2017 of \$200.00, and did not make his next payment of \$500.00 until September 8, 2017. Although the tenant eventually paid the balance in full, on September 8, 2017, 18 days after being deemed to have received the 10 Day Notice, \$5,000.00 was still outstanding. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on August 31, 2017, the corrected effective date on the 10 Day Notice.

In this case, this required the tenant and anyone on the premises to vacate the premises by August 31, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

The landlord continues to hold the tenant's security deposit of \$950.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$100.00 of the tenant's security deposit in satisfaction of the monetary claim.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service 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.

The landlord's application to recover the filing fee is granted. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$100.00 of the tenant's security deposit in satisfaction of the monetary claim.

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 28, 2017

Residential Tenancy Branch