



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MND, MNSD, 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 sections 46 and 55;
- a monetary order for unpaid rent, for damage to the unit and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:42 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord's agent (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.

The landlord testified that the Landlord's Application for Dispute Resolution (the Application) and evidentiary package was sent to the tenant by way of registered mail on September 22, 2017. 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 that the tenant was deemed served with the Application and evidentiary package on September 27, 2017, the fifth day after its registered mailing.

The landlord gave undisputed affirmed testimony that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted to the tenant's door on

September 07, 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 10, 2017.

At the outset of the hearing the landlord sought to amend their monetary claim from \$3,500.00 to \$4,135.76 due to rent owing since the 10 Day Notice was issued to the tenant. 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 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.

The 10 Day Notice was not provided at the time of the hearing. I instructed the landlord to provide the 10 Day Notice to the Residential Tenancy Branch by the end of the business day of the date of the hearing. I find that the tenant is not prejudiced in accepting the 10 Day Notice as late evidence as I have already found the tenant has been served with the 10 Day Notice.

The landlord did submit a copy of the 10 Day Notice by the deadline noted above. As such, I have considered this documentary 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, for damage to the unit and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order

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

Background and Evidence

The landlord gave written evidence that this tenancy began on April 01, 2016, with a current monthly rent of \$1,021.44 that is due on the first day of each month. The landlord testified they currently retain a security deposit in the amount of \$492.50. Term 10 of the tenancy agreement allows for a \$25.00 administrative late fee.

A copy of the signed 10 Day Notice dated September 07, 2017, identifying \$1,021.44 in unpaid rent, \$25.00 for non-sufficient funds fee charged from a financial institution (N.S.F.) and a \$25.00 administrative fee for late rent owing for this tenancy with an effective date of September 20, 2017, was included in the landlord's evidence.

The landlord testified that the tenant is still in the rental unit and has not made any payments towards the amount owing on the 10 Day Notice.

The landlord's amended application for a monetary award of \$4,135.76 is for the unpaid rent owing for September 2017, October 2017, November 2017 and December 2017 as well as a \$25.00 N.S.F. fee and a \$25.00 administrative late fee for September 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 undisputed evidence and 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. In accordance with section 46(5) of the *Act*, due to the failure of the tenant to take either of these actions within five days I find the tenant is conclusively presumed to have accepted the end of this tenancy on September 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 September 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. Section 7, subsections (c) and (d), of the *Residential Tenancy Regulations* allows for a landlord to recover a service fee charged by their financial institution and for a \$25.00 administrative fee for late payment of rent.

Based on the landlord's undisputed written evidence and affirmed testimony, I find the landlord is entitled to a monetary award of \$4,135.76 for unpaid rent owing for September 2017, October 2017, November 2017 and December 2017 as well as for the N.S.F. fee and late rent administrative fee for September 2017.

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

Pursuant to 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 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 landlord's favour under the following terms, which allows the landlord to recover unpaid rent, recover N.S.F. and administrative fees, to retain the tenant's security deposit and to recover the filing fee for the Application:

Item	Amount
Unpaid September 2017 Rent	\$1,021.44
N.S.F. fee for September 2017	25.00
Late Rent Administrative Fee September 2017	25.00
Unpaid October 2017 Rent	1,021.44
Unpaid November 2017 Rent	1,021.44
Unpaid December 2017 Rent	1,021.44
Less Security Deposit	-492.50
Filing Fee for this Application	100.00
Total Monetary Order	\$3,743.26

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: December 07, 2017

Residential Tenancy Branch