



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This participatory hearing was convened after the issuance of an October 27, 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.

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 she sent the tenant a copy of the notice of this adjourned hearing by registered mail on October 30, 2017. The tenant confirmed receipt of the notice of adjourned hearing. In accordance with section 89 of the *Act*, I find that the tenant was duly served with the notice of this adjourned hearing.

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 25, 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 30, 2017.

The landlord testified 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 13, 2017. The tenant

confirmed receipt of the 10 Day Notice. In accordance with section 88 of the *Act*, I find that the 10 Day Notice was duly served to the tenant on September 13, 2017.

The landlord requested to amend their Application for a monetary award from \$1,984.00 to \$4,993.00 due to rent 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 the application for dispute resolution.

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 November 01, 1988, with a monthly rent of \$590.00 due on the first day of each month. The landlord testified that they continue to retain a security deposit in the amount of \$295.00.

A copy of the signed 10 Day Notice dated September 13, 2017, identifying \$994.00 in rent owing for this tenancy, with an effective date of September 23, 2017, was included in the landlord's evidence.

A copy of a tenant ledger showing the rent owing and paid for this tenancy was also included in the landlord's evidence

The landlord testified that monthly rent as of the date as of the 10 Day Notice until December 2017 was \$990.00. The landlord testified that the current monthly rent as of January 01, 2018, is \$1,029.00 due to a rent increase that was given to the tenant in August 2017. The landlord testified that the tenant has not paid any rent since September 2017 and that they are seeking to end the tenancy.

The tenant confirmed the landlord's testimony regarding the amount of rent owed to be true. The tenant stated that they have had their wages garnished over the last few months and admitted that they have not paid any rent since 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 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 that, due to the failure of the tenant to take either of these actions within five days, the tenant is conclusively presumed to have accepted the end of this tenancy on September 23, 2017, the effective date on the 10 Day Notice pursuant to section 46(5) of the *Act*. In this case, the tenant and anyone on the premises were required to vacate the premises by September 23, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

The tenant requested to have until January 31, 2018, to move from the rental unit, which the landlord agreed to.

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 \$4,993.00 for unpaid rent owing for this tenancy for August 2017, September 2017, October 2017, November 2017, December 2017 and January 2018.

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. I find that \$195.40 is the applicable interest owed on the security deposit for a total security deposit of \$490.40.

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

Conclusion

I grant an Order of Possession to the landlord effective **on January 31, 2018, 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 from the tenant:

Item	Amount
Balance of Unpaid of August 2017 Rent	\$4.00
Unpaid September 2017 Rent	990.00
Unpaid October 2017 Rent	990.00
Unpaid November 2017 Rent	990.00
Unpaid December 2017 Rent	990.00
Unpaid January 2018 Rent	1,029.00
Less Security Deposit plus applicable interest	-490.40
Filing Fee for this Application	100.00
Total Monetary Order	\$4,602.60

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: January 15, 2018

Residential Tenancy Branch