



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FF

Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 12 minutes. The landlord PK attended the hearing representing both co-landlords (the "landlord") and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), dated October 2, 2017 was served on the tenant by posting on the rental unit door on that day. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on October 5, 2017, three days after posting.

The landlord testified that the landlords' application for dispute resolution dated October 17, 2017 was sent to the tenant by posting on the rental unit door on October 29, 2017. In accordance with sections 89(2) and 90 of the *Act*, I find that the tenant was deemed served with the landlords' application on November 1, 2017, three days after posting.

Issue(s) to be Decided

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

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This month-to-month tenancy began in December, 2008. The current monthly rent is \$775.00 payable on the first of each month. A security deposit of \$375.00 was collected at the start of the tenancy and is still held by the landlords. The tenant continues to reside in the rental unit at the time of the hearing.

The tenant failed to pay the full amount of rent for September, 2017. The tenant independently chose to deduct \$100.00 from the rental amount as he performed some maintenance work to the rental unit. The landlord said that the tenant was expressly told that he was not permitted to deduct any portion of the rent. The landlord testified that the tenant paid only \$675.00 for September, 2017 rent leaving an arrear of \$100.00.

The landlord testified that they issued a 10 Day Notice for the rental arrears. The landlord testified that the tenant made no subsequent payment against the arrears nor have they filed an application disputing the 10 Day Notice.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenant was obligated to pay the monthly rent in the amount of \$775.00. I accept the evidence before me that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenant dispute the 10 Day Notice within that 5 day period. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, October 15, 2017. Therefore, I find that the landlords are entitled to an Order of Possession, pursuant to section 55 of the *Act*.

As the landlords' application was successful, the landlords are also entitled to recover the \$100.00 filing fee for this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenant's \$375.00 security deposit in satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I grant an Order of Possession to the landlords effective **2 days after service on the tenants**. Should the tenants 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 landlords are authorized to retain \$100.00 of the tenant's \$375.00 security deposit. The security deposit for this tenancy is reduced to \$275.00.

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 11, 2018

Residential Tenancy Branch