



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- an Order of Possession for unpaid rent pursuant to section 55 of the *Act*;
- a monetary Order for unpaid rent pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the landlord and the tenant appeared at the hearing. The landlord was represented at the hearing by co-owner, J.L. (the "landlord"). Both parties were granted an opportunity to provide testimony, to make submissions and to call witnesses.

The tenant confirmed receipt of the landlord's 10 Day Notice for Unpaid Rent, along with the landlord's application for dispute resolution. Pursuant to sections 88 & 89 of the *Act*, the tenant is found to have been duly served with these documents.

Following opening remarks, the landlord asked to amend the monetary application to \$4,800.00 from \$3,600.00. The landlord said that rent remained unpaid for January 2018. As the tenant appeared at the hearing, acknowledged not paying rent for January 2018, and remaining in the rental unit, I find that the tenant would not be prejudiced by this amendment. Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to reflect this request.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

Can the landlord recover the filing fee associated with the application?

Background and Evidence

The landlord gave oral testimony that the tenancy began in December 2016. Rent was \$1,200.00 per month, and no security deposit was collected by the landlord.

The landlord said that numerous 10 Day Notices had been issued to the tenant, because the tenant had repeatedly failed to pay rent. The landlord said that rent remained unpaid for October, November, December 2017, as well as January 2018.

The tenant acknowledged not paying rent for this time, but argued that he had made an oral agreement with landlord, M.P. to perform various work around the house in exchange for compensation which was to be put against the rent. He argued that the landlord had failed to pay him for the work her performed in the home.

Analysis

The tenant failed to pay the rent for October, November, and December 2017 within five days of receiving the 10 Day Notice to End Tenancy on December 7, 2017. The tenant has not made 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*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by December 20, 2017, 10 days after the corrected effective date of the 10 Day Notice. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award.

During the hearing the tenant acknowledged not paying rent for the time periods in question but argued that he had made an oral agreement to perform various works around the home which were to be put against the outstanding rent.

Section 26(1) of the *Act* states, "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."

I find that little evidence of any arrangement to not pay rent was presented by the tenant. As is noted above in Section 26(1), rent is due whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement. I find the tenant has failed to pay rent in accordance with the terms of his tenancy agreement, and that the landlord has suffered a loss as a result of this non-compliance. I find that the landlord is entitled the entire amount sought in the application for a monetary award.

As the landlord was successful in the application, the landlord may recover the \$100.00 filing fee from the tenant.

Conclusion

The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a Monetary Order in the landlord's favour in the amount of \$4,900.00 against the tenant for the following items.

Item	Amount
Unpaid rent for October to December 2017 (\$1,200 x 3 months)	\$ 3,600.00
Unpaid rent for January 2018	1,200.00
Return of the Filing Fee	100.00
Total =	\$4,900.00

The landlord is provided with a Monetary 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 an Order 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 19, 2018

Residential Tenancy Branch