



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

This participatory hearing was convened after the issuance of a January 03, 2018, 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 landlords' application to a participatory hearing for the following:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent 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 landlord the landlord's property manager 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 indicated that she would be the primary speaker during the hearing.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord testified that the notice of this adjourned hearing was personally served to the tenant on January 05, 2018. The tenant confirmed receipt of the notice. In accordance with section 89 of the *Act*, I find 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 personally served

to the tenant on December 06, 2017, as a part of the direct request proceeding package. The tenant confirmed service of these documents. In accordance with sections 88 and 89 of the *Act*, I find the tenant was duly served with the Application and supporting evidence.

The landlord testified to the fact that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was personally served to the tenant on November 09, 2017. The tenant confirmed receipt of the 10 Day Notice. In accordance with section 88 of the *Act* I find the 10 Day Notice, identifying \$750.00 in rent owing for this tenancy, was duly served to the tenant on November 09, 2017.

At the outset of the hearing the landlord sought to increase their monetary claim from \$2,050.00 to \$4,650.00 to reflect the tenant's failure to pay \$1,300.00 in monthly rent for January 2018 and February 2018, the additional months of unpaid rent waiting for this hearing. 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 allow the amendment for January 2018 as this was clearly rent that the tenant would have known about and resulted since the landlord submitted their Application for Dispute Resolution. I do not allow the amendment for February 2018 as rent is due on the first of the month and the tenant had until midnight on the date of the hearing to pay the February 2018 rent. I dismiss the landlord's request to amend their Application for the February 2018 unpaid rent, with leave to reapply.

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 authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

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

Background and Evidence

The landlord provided written evidence that this tenancy began on September 15, 2017, with a current monthly rent of \$1,300.00, due on the first day of each month. The landlord testified that they have a security deposit in the amount of \$650.00.

A copy of the signed 10 Day Notice, dated November 09, 2017, with an effective date of November 19, 2017, was included in the landlord's evidence.

The landlord testified that they are seeking to end the tenancy due to the unpaid rent.

The tenant did not dispute the amount of rent owing and confirmed that he has not been able to pay the rent over the last few months and has a place that he is going to move to in the next few days.

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 the testimony of both parties, 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 the same timeframe. 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 November 19, 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 November 19, 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. Based on the landlord's evidence and the testimony of both parties, I find the landlord is entitled to a monetary award of \$3,350.00 for unpaid rent from October 2017 to January 2018.

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

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) 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 October 2017 Rent	\$150.00
Balance of Unpaid November 2017 Rent	600.00
Unpaid December 2017 Rent	1,300.00
Unpaid January 2018 Rent	1,300.00
Less Security Deposit	-650.00
Filing Fee for this Application	100.00
Total Monetary Order	\$2,800.00

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: February 02, 2018

Residential Tenancy Branch