



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with applications from both parties.

The tenant applied to:

- Cancel the landlord's 10 Day Notice to End Tenancy For Unpaid Rent ("10 Day Notice") pursuant to section 46 of the *Act*.

The landlord applied to:

- recover unpaid rent pursuant to section 67 of the *Act*; and
- receive an Order of Possession pursuant to section 55 of the *Act*

Both the landlord and the tenant appeared at the hearing. The landlord was represented at the hearing by agent, S.Y. Both parties were given a full opportunity to be heard, to present their testimony, to make submissions, to call witnesses and to cross-examine one another.

Tenant S.B. confirmed receipt of the landlord's 10 Day Notice to End Tenancy on approximately December 9, 2017. Pursuant to section 88 of the *Act*, the tenant is found to have been duly served with the landlord's 10 Day Notice

Issue(s) to be Decided

Can the tenant cancel the landlord's 10 Day Notice? If not, is the landlord entitled to an Order of Possession?

Can the landlord recover the unpaid rent?

Background and Evidence

The parties explained that this tenancy began in June 2005. Rent is currently \$427.00 per month, and a security deposit of \$272.00 paid at the outset of the tenancy, continues to be held by the landlord.

The landlord said that a 10 Day Notice was issued to the tenant because rent was unpaid for October, November and December 2017.

The tenant denied that rent was unpaid and said that he placed a brown envelope in the landlord's mailbox containing the outstanding rent in cash. The tenant said that he had a witness who could provide evidence to this fact, but that the witness was unavailable to attend the hearing. The tenant explained that he had suffered a brain injury and could therefore not recall the exact date that this envelope containing his rent was placed in the landlord's mailbox, but said that it is possible the rent was stolen because the mailbox was unlocked and various other items had recently been stolen from the building.

The landlord has applied for both an Order of Possession and a monetary award of \$1,281.00 representing the unpaid rent which he alleges is outstanding for October, November and December 2017.

Analysis

The tenant explained to the hearing that he had paid rent in cash by placing it in the landlord's unlocked mailbox on a date which was unknown to him. Based on the oral testimony presented to the hearing by both parties I find that the tenant has failed to show that he paid the outstanding rent listed on the 10 Day Notice. In the absence of testimony from his witness, or any other supporting evidence, I find it very difficult to accept the tenant's testimony that rent was paid. Furthermore, the tenant was unable to provide a date on which rent was paid. I find that the landlord's notice complies with both sections 46 and 52 of the *Act* and is therefore valid. This required the tenant to vacate the premises by December 18, 2017. 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.

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 his entitlement to a monetary award.

Based on the oral testimony presented at the hearing, I find that the landlord has sufficiently demonstrated that rent was unpaid for October, November and December 2017. I do not accept the tenant's explanation of events and find that rent of \$1,281.00 remains outstanding.

Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$272.00 in partial satisfaction of the monetary order awarded.

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 of \$1,009.00 in favour of the landlord as follows:

Item	Amount
Unpaid Rent for October 2017	\$427.00
Unpaid Rent for November 2017	427.00
Unpaid Rent for December 2017	427.00
Less Security Deposit	(-272.00)
Total =	\$1,009.00

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.

I order the landlord to retain the tenant's security deposit in full.

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 21, 2018

Residential Tenancy Branch