Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   OPR MNR FF

Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application for:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent, and for money owed for damage or loss under the *Act*; and
- recovery of the filing fee from the tenant, pursuant to section 72 of the *Act*.

While the landlord's agent, S.A. (the "landlord"), attended the hearing by way of conference call, the tenant did not. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave undisputed sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was given in person to the tenant on January 4, 2018. I find that in accordance with sections 88 and 90 of the *Act* the 10 Day Notice was deemed to have been served on the tenant on the same day as service*.*

The landlord testified that the tenant was served with the Landlord's Application for Dispute Resolution hearing package ("dispute resolution hearing package") in person on January 25, 2018. In accordance with sections 89 and 90 of the *Act*, I find the tenant deemed to be served with the landlord's dispute resolution hearing package and evidence on the same day as its service.

Following opening remarks, the landlord asked if she could amend her Monetary Order to represent unpaid rent for March 2018. The landlord stated that the tenant was provided with a 10 Day Notice to End Tenancy in January 2018, that no rent has been paid since its issuance and that the tenant continues to reside in the property. Pursuant to section 63 of the *Act*, I amend the landlord's Monetary Order to reflect unpaid rent for March 2018

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order for unpaid rent?

Is the landlord entitled to recovery of the filing fee from the tenant?

Background and Evidence

The landlord provided undisputed testimony that the tenancy in question began on November 1, 2015. Rent is $800.00 per month, and a security deposit of $400.00 paid at the outset of the tenancy, continues to be held by the landlord.

The landlord has applied for an Order of Possession and a Monetary Order for non-payment of rent for the months of August/September/October/November and December 2017, along with unpaid rent for January/February and March 2018. The landlord is seeking a monetary order of $6,400.00 for the unpaid rent associated with the tenancy and a return of the filing fee.

The tenant failed to attend the hearing and provided no submissions or evidence.

Analysis

The tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. 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 her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by January 14, 2018, the effective day 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.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. 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. The landlord provided undisputed oral testimony and written evidence was submitted with the hearing package demonstrating that rent has not been paid rent for August/September/October/November and December 2017, along with January/February and March 2018

Pursuant to section 67 of the *Act* and based on the landlord's uncontested evidence, I find that the landlord is entitled to a monetary award of $6,400.00 related to unpaid rent.

As the landlord was successful in her application, she can, pursuant to section 72 of the *Act*, recover the cost of the $100.00 filing fee from the tenant. While the landlord has not applied to retain the tenant's security deposit, using the offsetting provision contained in section 72 of the *Act*, I allow the landlord to retain the tenant's $400.00 security deposit in partial satisfaction of the unpaid rent.

Conclusion

I am granting the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I am making a Monetary Order of $6,100.00 in favour of the landlord as follows:

Item	Amount
Unpaid rent for August 2017	$800.00
Unpaid rent for September 2017	800.00
Unpaid rent for October 2017	800.00
Unpaid rent for November 2017	800.00
Unpaid rent for December 2017	800.00
Unpaid rent for January 2018	800.00
Unpaid rent for February 2018	800.00
Unpaid rent for March 2018	800.00
Less Security Deposit	(-400.00)
Return of filing fee	100.00
Total Monetary Award	**$6,100.00**

The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: March 16, 2018

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Residential Tenancy Branch