



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPR, MNRL-S

Introduction

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

- an Order of Possession pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 67;
- an Order that the security deposit be applied to the claim pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10:20 AM in order to enable the tenant to call into the teleconference hearing scheduled for 9:30 AM. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed from the teleconference system that the landlord and his witness and I were the only ones who had called into this teleconference.

The landlord had requested a monetary order for unpaid rent in his application in the amount of \$5,700.00. At the hearing, the landlord confirmed that the current amount owing for unpaid rent was \$4,300.00 and, requested that the application be amended to reflect this. I granted this amendment pursuant to my authority in accordance with section 64.3(C) of the *Act*.

Preliminary Issue – Service of Notice of Hearing on Tenant

Rule 3.5 of the Rules of Procedure provides that at the hearing, the applicant must demonstrate to the satisfaction of the arbitrator that each respondent was served with the relevant documents including the Dispute Resolution Proceeding Package and all evidence as required by the Act and the Rules.

In this matter, the situation was complicated by the fact there was an administrative - scheduling error and the original hearing was not able to proceed on April 6th, 2018. Thereafter the landlord provided the RTB with the phone number of the tenant and notes in the file confirm that RTB Staff called the tenant and left messages twice requesting an email address to facilitate service of the Notice of Hearing for today. These calls were not returned by the tenant and the file indicates that the Notice of Hearing was mailed to the tenant at the rented premises on April 9th. The landlord gave uncontradicted evidence that the tenant continues to occupy the premises.

Sections 71 (1) and 89 (1) (e) of the *Act* allow me to make an order that a document that was not served in accordance with section 88 or 89 is sufficiently given or served for the purposes of the Act. In accordance with sections 89 and 90 of the *Act*, I find the tenant deemed to be served with the Notice of Hearing on April 14, 2018, five days after their mailing.

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?

Can the landlord apply the security deposit against any Monetary Order issued?

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 October 15, 2017, when the tenant took occupancy of the premises. The landlord explained that there was no written tenancy agreement. The landlord gave uncontradicted testimony that:

- the tenant agreed to pay the sum of \$700.00 as rent for the period between October 15 and 31st, 2017
- the tenant agreed to pay the sum of \$1,400.00 for rent starting November 1, 2017, payable on the first day of November and each month thereafter
- the tenant agreed to pay the sum of \$700.00 as a security deposit
- the tenancy was to be month to month

The landlord acknowledged that the tenant has paid the following amounts:

- October 2017 rent of \$700.00 on October 15, 2017
- Security deposit of \$700.00 on October 15, 2017
- November 2017 rent of \$1,400.00 on November 1, 2017
- Payment on account of rent of \$2,700.00 on or about March 6, 2018

The landlord gave undisputed sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was posted on the door of the rental unit on February 27, 2018.

A copy of a signed and dated, proof of service document was provided to as part of the landlord's evidentiary package. The first page of the document confirms the service on February 27, as set out above. However, the second page, including the statement of the witness "KS" indicates that service took place on March 20, 2018. I was able to have the system operator contact the witness "KS" via telephone and he was added to the hearing call. He gave undisputed sworn testimony that the service of the 10 Day Notice did in fact occur on February 27, 2018, by posting on the door to the unit and, that he had witnessed this. He also confirmed that the reference to service on March 20, 2018, in fact related to the service of the landlord's dispute resolution package, evidence and, the notice of the first hearing date. The landlord agreed with and confirmed these facts via his own subsequent undisputed sworn testimony.

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 March 2, 2018, being 3 days after it was posted on her door.

The landlord has applied for an Order of Possession and a Monetary Order for non-payment of rent. The landlord is seeking a monetary order of \$4,300.00 for unpaid rent associated with the tenancy plus the return of the \$100.00 filing fee. Specifically, the landlord seeks the following:

Item	Amount
Unpaid rent for December 2017	\$1,400.00
Unpaid rent for January 2018	1,400.00
Unpaid rent for February 2018	1,400.00
Unpaid rent for March 2018	1,400.00
Unpaid rent for April 2018	1,400.00
Return of Filing Fee	100.00
Less credit for March 6, 2018 payment received	-2,700.00
Less credit for security deposit retained	-700.00
Total =	3,700.00

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 March 7, 2018, the corrected effective day of the 10 Day Notice, pursuant to section 53 of the *Act*. 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 as is set out in detail above.

Pursuant to section 67 of the *Act* and based on the landlord's uncontested evidence, I find that the landlord is entitled to recover the sum of \$4,300.00 related to unpaid rent.

I allow the landlord's application to retain the tenant's \$700.00 security deposit in partial satisfaction of the monetary award issued in this decision.

As the landlord was successful in his application, he can, pursuant to section 72 of the *Act*, recover the cost of the \$100.00 filing fee from the tenant

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 \$3,700.00 in favour of the landlord calculated as set out in the chart on page 4 above.

The landlord is provided with a formal monetary Order in the above terms. Should the tenant fail to comply with the Order, it may be filed and enforced as an Order 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: April 19, 2018

Residential Tenancy Branch