



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNRL-S OPC OPR CNR ERP

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for non-payment of rent and for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenant were duly served with the Applications and evidence.

The tenant indicated at the beginning of the hearing that he was in the process of moving out, and both parties agreed that this tenancy will end on May 16, 2018 at 4:00 p.m. As this tenancy will end on May 16, 2018, both the tenant’s application and landlord’s non-monetary applications were cancelled. As advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord if the tenant does not move out by 4:00 p.m. on May 16, 2018. The landlord is provided with this Order and the tenant must be served with this Order in the event that the tenant does not move out as agreed to during the hearing. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

Although the landlord applied for a monetary Order of \$2,010.00 in their initial claim, since they applied another \$1,125.00 in rent has become owing that was not included in their application. I have accepted the landlord's request to amend their original application from \$2,010.00 to \$3,135.00 to reflect this additional unpaid rent that became owing by the time this hearing was convened.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent?

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

Background and Evidence

This month-to-month tenancy began in September 2017 with monthly rent in the amount of \$750.00 payable on the first of every month. The landlord holds a security deposit in the amount of \$330.00 for this tenancy.

The landlord testified that the tenant owes \$3,135.00 in outstanding rent as follows:

Item	Amount
Unpaid Rent as of January 2018	\$510.00
Unpaid Rent for February 2018	750.00
Unpaid Rent for March 2018	750.00
Unpaid Rent for April 2018	750.00
Unpaid Rent for May 2018	375.00
Total Monetary Order Requested	\$3,135.00

The landlord testified that the tenant has not paid any rent since he was issued the 1 Month Notice to End Tenancy on February 1, 2018. The tenant testified in the hearing that he only owed \$1,200.00 in outstanding rent. The tenant testified that his funding was eliminated after being issued the 1 Month Notice to End Tenancy, and that he felt entitled to a rent reduction for repairs not performed by the landlord. The tenant also testified that he had made payments towards his rent, but did not provide a detailed summary of these payments made.

The landlord is seeking a monetary order for the unpaid rent, as well as recovery of the filing fee.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) *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.*

Section 26 of the *Act* requires that “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.”

Based on the testimony and evidence provided for this hearing I find that that the monthly rent was set at \$750.00, and the tenant has failed to pay \$3,135.00 in outstanding rent as claimed by the landlord. The tenant testified that he has paid portions of the outstanding rent, but did not provide proof of payment, nor a detailed summary of when payments were made, and what amounts. The tenant has not obtained any orders by an Arbitrator to deduct or reduce any portion of his rent. I find that the tenant has failed to pay the outstanding rent as he is required to pay under section 26(1) of the *Act*. Accordingly, I find that the landlord is entitled to a monetary order in the amount of \$3,135.00 for the outstanding rent for this tenancy.

The landlord continues to hold the tenant’s security deposit of \$330.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant’s security deposit in partial satisfaction of the monetary claim.

As the landlord was successful in their application, I find that they are entitled to recover the filing fee for this application.

Conclusion

As discussed during the hearing, I issue an Order of Possession to the landlord, which is to take effect by 4:00 p.m. on May 16, 2018. The landlord is provided with this Order in the above terms and the tenant must be served with this Order in the event that the tenant does not move out by 4:00 p.m. on May 16, 2018. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a \$2,905.00 Monetary Order in favour of the landlord, as set out in the table below, which allows the landlord to recover the unpaid rent, the filing fee for this application, and also allows the landlord to retain the tenant’s security deposit in partial satisfaction of the monetary claim.

Item	Amount
Unpaid Rent as of January 2018	\$510.00
Unpaid Rent for February 2018	750.00
Unpaid Rent for March 2018	750.00
Unpaid Rent for April 2018	750.00

Unpaid Rent for May 2018	375.00
Filing Fee	100.00
Less Security Deposit	-330.00
Total Monetary Order	\$2,905.00

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 an Order of that Court.

The remaining portion of the landlord and tenant's application were cancelled as the tenant and landlord agreed that this tenancy would end on May 16, 2018.

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: May 25, 2018

Residential Tenancy Branch