



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNRL-S, MNDCL-S, FFL, CNC, CNR

Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the “Act”).

The tenant seeks:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) pursuant to section 46; and
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause pursuant to section 47.

The landlord seeks:

- an Order of Possession for unpaid rent pursuant to section 55;
- an Order of Possession for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- recovery of the filing fees for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service of documents was confirmed. The tenant confirmed that they were served with the landlord’s 1 Month Notice on April 6, 2018, the 10 Day Notice on April 10, 2018, and the landlord’s application and evidence on or about April 20, 2018. The landlord confirmed receipt of the tenant’s application on or about April 12, 2018. Based on the undisputed testimonies, I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession for unpaid rent? Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession for cause? Is the landlord entitled to a monetary award as claimed? Is the landlord entitled to recover the filing fee for the application from the tenant?

Background and Evidence

The parties agreed on the following facts. This tenancy began in January, 2018. The monthly rent is \$1,100.00 payable on the first of each month. In addition the tenant is responsible for paying 30% of the utilities for the property up to a maximum of \$150.00 each month. A security deposit of \$550.00 was paid at the start of the tenancy and is still held by the landlord.

The landlord testified that the tenant failed to pay the rent for the month of April and a 10 Day Notice was issued on April 10, 2018. The landlord said that they made written demand for the outstanding utilities on March 1, 2018 prior to including that amount on the 10 Day Notice. The landlord said that the tenant did not pay any amount of the arrears. The landlord testified that as of the date of the hearing the arrears for this tenancy is \$2,450.00. The landlord submitted into written evidence copies of the utility invoices in support of the arrears amount.

The tenant testified that she agrees that she has not paid the rent for April or May, 2018 or any portion of the utilities for those months. The tenant testified that she agrees with the landlord's calculation that the arrears for this tenancy is \$2,450.00. The tenant said that there were extenuating circumstances that prevented her from paying the rent in April, 2018. The tenant said that she now has the means to make payment but has not as she feels she may need the funds to move out if an order of possession is issued.

Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is

based. In the present case both parties agreed that the tenant has not paid the rent owing for April and May, 2018.

The tenant gave evidence of the reasons why payment was not made in April, 2018. The tenant testified that the money she intended to use to pay rent was stolen. I find that the tenant's submission is not supported in the evidence and in any event is irrelevant. The obligation to pay rent as required in the tenancy agreement is not suspended when it is inconvenient for the tenant. More egregiously, the tenant testified that she later gained the means to pay the rental arrears but chose not to pay.

I accept the undisputed evidence that there was a rental arrear of \$1,100.00 and utility arrear of \$150.00 when the 10 Day Notice was issued and the tenant failed to pay the full arrears within 5 days of service. Accordingly, I find that the tenancy ended on the effective date of the 10 Day Notice, April 23, 2018. Therefore I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the Act.

As I have found the landlord is entitled to an Order of Possession for unpaid rent I find it unnecessary to make a finding on the landlord's 1 Month Notice.

The landlord testified that the arrears for this tenancy is \$2,450.00. The tenant testified that she agrees that the figure provided is correct. Based on the undisputed testimony of the parties I find that there is an arrear of \$2,450.00 for this tenancy and issue a monetary award in the landlord's favour for that amount.

As the landlord was successful in their application they are entitled to recover the \$100.00 filing fee for this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$550.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

The tenants' application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or any occupant 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.

I issue a monetary Order in the landlord's favour for \$2,000.00 on the following terms.

Item	Amount
Rental Arrears	\$2,450.00
Filing Fee	\$100.00
Less Security Deposit	-\$550.00
TOTAL	\$2,000.00

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.

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 17, 2018

Residential Tenancy Branch