



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPR, FFL

Introduction

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

- an Order of possession for unpaid rent pursuant to sections 46 and 55;
- a monetary Order for unpaid rent pursuant to sections 26 and 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the landlord's monetary claim for unpaid rent pursuant to section 67 and 72 of the *Act*; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties agreed that the landlord posted the notice of dispute resolution package (the "package") on Tenant T.S.'s (the "tenant") door on April 24, 2018. The tenant confirmed receipt of the package on April 24, 2018. While posting the package is not an acceptable means of service, pursuant to section 89 of the *Act*, because the tenant testified that he received the package the same day it was posted, I find that pursuant to section 71 of the *Act*, the package is sufficiently served on the tenant for purposes of the *Act*.

The tenant testified that the other tenant listed on the landlord's application and on the tenancy agreement, tenant H.C., moved out of the residence on or near April 3, 2018 and did not receive a copy of the package. Tenant H.C. did not attend this hearing. I find that tenant H.C. was not served a copy of the package pursuant to section 89 of the *Act*. I therefore amend this application, pursuant to section 64 of the *Act*, to exclude tenant H.C.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a monetary Order for unpaid rent pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the landlord's monetary claim for unpaid rent pursuant to section 67 and 72 of the *Act*?
4. Is the landlord entitled to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 1, 2018 and is currently ongoing. Monthly rent in the amount of \$1,050.00 is payable on the first day of each month. A security deposit of \$525.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

Both parties agreed to the following facts. The tenant did not pay rent of April 1, 2018. The landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") on April 11, 2018. The 10 Day Notice stated an effective date of April 21, 2017. The tenant paid \$1,050.00 on April 17, 2018 and was issued a receipt for "use and occupancy only". The tenant has not paid May 2018 rent.

Analysis

As both parties testified that the landlord personally served the 10 Day Notice on the tenant on April 11, 2018, I find that the tenant was served with the 10 Day Notice on April 11, 2018 in accordance with section 88 of the *Act*.

The tenant failed to pay the April 2018 rent within five days of receiving the 10 Day Notice. The tenant has not made an 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 his tenancy on the effective date of April 21, 2018.

In this case, this required the tenant to vacate the premises by April 21, 2018. 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. 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.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement. I find that the tenant was obligated to pay the monthly rent in the amount of \$1,050.00 on the first day of each month which he failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$1,050.00 in unpaid rent, for the month of May 2018.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$525.00 in part satisfaction of her monetary claim for unpaid rent against the tenant.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. 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.

Pursuant to section 67 and 72 of the *Act*, I issue a monetary Order under the following terms, which allows the landlord to recover damages for unpaid rent and the filing fee for this application:

Item	Amount
May 2018 Rent	\$1,050.00
Filing Fee	\$100.00
Less security deposit	-\$525.00
Total	\$625.00

The landlord is provided with this 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.

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 22, 2018

Residential Tenancy Branch