



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0963050L BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPC, MNC

Introduction

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

- an Order of Possession pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67;

Both parties attended the hearing and were given an opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporate landlord was primarily represented by its agent JB (the "landlord").

As both parties were present service of documents was confirmed. The tenant confirmed they were served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent and the 1 Month Notice to End Tenancy for Cause both dated March 5, 2018 when they were posted on the rental unit door. The tenant testified that they were served with the landlord's application for dispute resolution and evidence on or about March 21, 2018. The tenant said that they had not filed any materials. Based on the undisputed testimony I find that the tenant was served with the landlord's Notices to End Tenancy, the application for dispute resolution and evidence in accordance with sections 88 and 89 of the *Act*.

During the hearing the landlord said that there was a calculation error in their application for a monetary award. As correcting an arithmetic error is reasonably foreseeable, pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlord's Application to increase the landlord's monetary claim from \$3,629.48 to \$3,708.00.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary award as requested?

Background and Evidence

The parties agreed on the following facts. The monthly rent for this tenancy is \$927.00 payable on the first of each month. The tenant confirmed that he has not paid any rent for March, April, May, and June, 2018. The tenant acknowledged they were served with the landlord's notices to end tenancy and have not filed an application disputing the notices nor have they made any payment against the rental arrears.

The tenant testified that the rental unit requires repairs and maintenance and the landlord has been wholly unresponsive. The tenant said that they have refused to pay rent until the landlord performs the necessary repairs to the rental unit.

Analysis

In accordance with subsection 46(4) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving a valid 10 Day Notice.

Pursuant to section 26(1) of the *Act*, a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. While the tenant submits that the rental unit requires repairs and maintenance as it is in a state of disrepair, I find that this does not allow the tenant to make a unilateral deduction from the rent. The *Act* does not provide that the tenant may simply make deductions from the monthly rent even if they feel the landlord is being negligent in maintaining the rental unit.

I find that the tenant was obligated to pay the monthly rent in the amount of \$927.00. I accept the evidence before me that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenant dispute the 10 Day Notice within that 5 day period. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, March 18, 2018 . Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the parties' evidence that the tenant has not paid any rent for 4 months. I accept that the total amount of arrears for this tenancy is \$3,708.00. Accordingly, I issue a monetary award for unpaid rent owing of \$3,708.00 as at June 5, 2018, the date of the hearing, pursuant to section 67 of the *Act*.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone 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 in the amount of \$3,708.00. 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: June 5, 2018

Residential Tenancy Branch