



Dispute Resolution Services

Page: 1

Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding COQUITLAM KINSMEN HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL, MNRL-S, FFL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord requesting an Order of Possession under a notice for unpaid rent. The Landlord also requests a monetary order for payment of the rent arrears and would like to retain the security deposit in partial satisfaction of that award. Finally, the Landlord also request an order for payment of the filing fee.

The manager represented the Landlord and appeared for the scheduled hearing (hereinafter referred to as “Landlord”). I find that the notice of hearing was properly served in person by the Landlord on May 28, 2018 and that evidence was submitted and served by the Landlord. The Tenant did not appear for the hearing; I left the teleconference hearing connection open until 11:12 a.m. in order to enable the Tenant to call into this teleconference hearing scheduled 11:00 a.m.

The Landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord’s representatives and I were the only ones who had called into this teleconference.

Issues to be Decided

Is the Landlord entitled to an Order of Possession from a 10-Day Notice to End Tenancy for Unpaid Rent, pursuant to sections 46 and 55 of the Residential Tenancy Act (“Act”)?

Is the Landlord entitled to a monetary order for unpaid rent, pursuant to section 67 of the Act?

Is the Landlord entitled to use the security deposit in partial satisfaction of the monetary award, pursuant to section 38 of the Act?

Is the Landlord entitled to payment of the filing fee, pursuant to section 72 of the Act?

Background and Evidence

The parties entered into a tenancy agreement in January of 2014; a copy was submitted into evidence. The rent was to be determined as 30% of the tenant’s gross monthly household income or “*other scale as the landlord may determine from time to time*”.

A rent report dated July 1, 2017 to June 30, 2018 submitted by the Landlord states that the Tenant's share of the rent was \$466.00, with a rent subsidy of \$570.00. On July 1, 2018, the Tenant's share of his rent was adjusted to \$736.00 based on his gross income. A security deposit of \$400.00 was paid at the start of the tenancy.

The Landlord served several 10-Day Notices to End Tenancy for Unpaid Rent: January 18, 2018, November 13, 2017 and May 3, 2018. The Landlord states that when the ministry directly paid the Tenant's share, rent arrears were not an issue; when the process changed and rent was directly collected from the Tenant, concerns arose about timely payments.

The latest Notice claims \$466.00 of rent arrears due May 1, 2018. It had an effective date of May 13, 2018 and it was served by posting it on the Tenant's door on May 3, 2018; a proof of service form was signed by a witness and submitted into evidence. The Tenant did not file a dispute application or pay the arrears within the 5-day limitation period.

The Landlord states that the Tenant paid the May rent on May 30th, but that rent continued to fall into arrears after that. It is currently in arrears in the sum of \$466.00 for June and \$736.00 for July, which is the adjusted amount from July 1st, 2018 and based on the Tenant's income. The Landlord asks for an Order of Possession and a monetary order for payment of the arrears and filing fee; the Landlord also asks to retain the security deposit of \$400.00 in partial satisfaction of any monetary award.

Analysis

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenant did not call into the conference call by 11:10 a.m., and service was proven, I decided to proceed with the Landlord's Application in the Tenant's absence.

Under section 46 of the Act, the Landlord is entitled to serve a 10-Day Notice to End Tenancy for unpaid rent:

"Landlord's notice: non-payment of rent

46 (1) *A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*

(2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy]."*

The Notice must comply with section 52 in form and in content. I have reviewed the Notice and find that it complies with the requirements.

I further find that the Notice was served on May 3, 2018 by posting it on the Tenant's door and that it is deemed to have been served three days after, on May 6, 2018. The effective date is self-corrected from the stated date of May 13, 2018 to May 16, 2018, as per section 53(3) of the Act. The Tenant had 5 days from May 6, 2018 to either dispute the notice or pay the arrears to avoid eviction; the Tenant has done neither. Accordingly, the Tenant is conclusively presumed to have accepted the Notice to End Tenancy:

“46 (4) Within 5 days after receiving a notice under this section, the tenant may
(a) pay the overdue rent, in which case the notice has no effect, or
(b) dispute the notice by making an application for dispute resolution.
(5) If a tenant who has received a notice under this section does not pay the rent or
make an application for dispute resolution in accordance with subsection (4), the tenant
*(a) is **conclusively presumed to have accepted that the tenancy ends***
on the effective date of the notice, and
(b) must vacate the rental unit to which the notice relates by that date.”
(bolding added)

I find that the Landlord has proven their claim and an Order of Possession is granted.

This order will be effective two days after service upon the Tenant by the Landlord. The Tenant must be served with a copy of the order and this may be enforced through the Supreme Court of British Columbia. Copies of this order are attached to the Landlord's copy of this decision.

I have reviewed the documentation provided by the Landlord and find that the Tenant is currently in arrears; the amount of the arrears for the month of June are \$466.00 as per the November 21, 2017 rent report given to the Tenant. I accept the Landlord's undisputed testimony that the new amount owing as of July 1st is \$736.00. I am satisfied that the total rent arrears owing is \$1,202.00, which will be awarded to the Landlord.

The Landlord asks that it be allowed to retain the security deposit of \$400.00 in partial satisfaction of the monetary award. Under section 72(2)(b) of the Act, an amount ordered to be paid from a tenant to a landlord may be deducted by the amount of a security deposit. As the Landlord was successful in it's application, I am also awarding the filing fee of \$100.00.

Accordingly, I am allowing the Landlord to retain the \$400.00 security deposit in partial satisfaction of the award, which is calculated as follows:

Item	Amount
Unpaid Rent - June	\$466.00
Unpaid Rent - July	736.00
	1,202.00
Less Security Deposit	-400.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$902.00

This Order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment. Copies of this order are attached to the Landlord's copy of this Decision.

Conclusion

I hereby grant an Order of Possession in favour of the Landlord effective two days after service upon the Tenant. This order is final and binding on the parties and may be enforced in the Supreme Court of British Columbia as an order of that court should the tenant fail to comply with it.

I further Order the Tenant to pay forthwith to the Landlord the sum of \$902.00 for the balance of the rent arrears and filing fee.

The Landlord shall retain the security deposit of \$400.00 paid by the Tenant.

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: July 12, 2018

Residential Tenancy Branch