



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ReMax Check Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An Order of Possession pursuant to Sections 46 and 55;
- A Monetary Order for unpaid rent pursuant to Section 67;
- An order to retain the security deposit pursuant to Section 72; and
- Authorization to recover the filing fee for this application from the tenants pursuant to Section 72.

The landlord attended the hearing and provided affirmed testimony. The landlord was given the opportunity to make submissions as well as present oral and written evidence.

The landlord testified the tenant was served with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on June 11, 2018 and deemed received by the tenant five days later under Section 90, on June 16, 2018. The landlord provided the Canada Post tracking numbers in support of service.

Pursuant to Section 89, I find the tenant was served with the Notice of Hearing and Application for Dispute Resolution on June 16, 2018

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession pursuant to Section 46 and 55 of the *Act*?
- Is the landlord entitled to a Monetary Order pursuant to Section 67 of the *Act*?

- Is the landlord entitled to retain the security deposit pursuant to Section 72 of the *Act*?
- Is the landlord entitled to reimbursement of the filing fee pursuant to Section 72(1) of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant, indicating a monthly rent of \$800.00, due on the first day of each month, for a tenancy commencing on February 01, 2017;
- A copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”) dated May 7, 2018, for \$2,400.00 in unpaid rent. The 10-Day Notice provides the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of May 21, 2017;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10-Day Notice was posted to the tenant’s door on May 7, 2018 thereby effecting service three days after posting on May 10, 2018 pursuant to Sections 88 and 90; and
- A copy of a tenant ledger showing the rent owing and paid during the relevant portion of this tenancy indicating a balance currently owing at the time of the application of \$2,400.00 for rent.

The landlord testified having received \$400.00 from the tenant as a security deposit and \$400.00 for a pet deposit, for a total of \$800.00 (together referred to as “the deposits”) at the time of signing the agreement. The landlord retains the deposits.

The landlord provided uncontradicted testimony no rent has been received after service of the 10-Day Notice and rent of \$3,200.00 is currently owing to the landlord.

The landlord testified the tenant continues to occupy the premises.

Analysis

I have reviewed all documentary evidence and testimony. I am satisfied the form and content of the 10-Day Notice complies with Section 52 of the *Act*. I am satisfied the tenant was served with the 10-Day Notice on May 10, 2018 in accordance with Section 88 of the *Act* and with the Notice of Hearing documents in accordance with Section 89 of the *Act*.

I am satisfied the tenant has not paid the overdue rent or disputed the 10-Day Notice within the five-day period following service. Therefore, pursuant to Section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice of May 21, 2018 requiring the tenant to vacate the rental unit by that date.

Based on the uncontradicted evidence of the landlord, I find the landlord is entitled to a Monetary Order pursuant to Section 67 in the amount of \$3,200.00 for unpaid rent as well as the \$100.00 filing fee paid by the landlord for this application for a total of \$3,300.00.

In accordance with the offsetting provisions of Section 72 of the *Act*, I allow the landlord to retain \$800.00 of the tenant's deposits in partial satisfaction of the monetary award issued in the landlord's favour.

A summary of my finding follows:

Award to landlord for outstanding rent	\$3,200.00
Reimbursement of filing fee	\$100.00
(Less deposits)	(\$800.00)
Monetary Order	\$2,500.00

Conclusion

I grant the landlord an Order of Possession with respect to the premises effective two days after service upon the tenant.

This Order of Possession must be served on the tenant. If the tenant fails to comply with this Order, the landlord may file the Orders in the Supreme Court of British Columbia to be enforced as an Order of that Court.

I also grant a Monetary Order in the amount of **\$2,500.00** comprising \$3,200.00 in unpaid rent and the \$100.00 filing fee paid by the landlord for the Application less the security deposit of \$800.00.

This Monetary Order must be served on the tenant. If the tenant fails to comply with this Order, the landlord may file the Order in the Provincial Court (Small Claims) to be 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: August 7, 2018, 2018

Residential Tenancy Branch