



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, 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;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) and the tenant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord testified that the Application for Dispute Resolution (the Application) and evidentiary package were left in the mailbox at the tenant's residence in June 2018. The tenant acknowledged receipt of the Application and evidence. Although the Application is not served in accordance with section 89 (1) of the *Act*, as the tenant confirmed service, I find the tenant is duly served with the Application and evidence pursuant to section 71 (c) of the *Act*, which allows an Arbitrator to find a document sufficiently served for the purposes of the *Act*.

The landlord testified to the fact that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted to the door of the rental unit on May 29, 2018. The tenant confirmed receiving the 10 Day Notice. In accordance with sections 88 and 90 of

the Act I find that the 10 Day Notice, identifying \$2,250.00 in rent owing for this tenancy, was deemed served to the tenant on June 01, 2018.

At the outset of the hearing the landlord sought to increase their monetary claim from \$2,250.00 to \$4,650.00 to reflect the tenants' failure to pay \$800.00 in monthly rent for June 2018, July 2018 and August 2018, the additional months of unpaid rent waiting for this hearing.

Residential Tenancy Rule of Procedure 4.2 states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. I allow the amendment as this was clearly rent that the tenant would have known about and resulted since the landlord submitted their Application for Dispute Resolution.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to authorization to retain all or a portion of the tenant's security deposit?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord and tenant agreed that this tenancy began on at some point in 2011, with a current monthly rent of \$800.00 due on the first day of each month. The landlord testified that they did not obtain a security deposit from the tenant, which the tenant did not dispute.

A copy of the signed 10 Day Notice, dated May 29, 2018, with an effective date of June 09, 2018, was included in the landlord's evidence.

The landlord also provided a tenant ledger showing the rent owing and paid during this tenancy.

The landlord testified that they are seeking to end the tenancy due to the unpaid rent.

The tenant testified that there have been numerous circumstances in the tenant's life which have challenged them and impeded the tenant's ability to pay their monthly rent contribution. The tenant confirmed that she did not dispute the 10 Day Notice and does not dispute the amount claimed by the landlord

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Based on the landlord's evidence and the testimony of both parties, I find that the tenant failed to pay any rent within five days of receiving the 10 Day Notice and did not make an application pursuant to section 46(4) of the *Act* within the same timeframe. In accordance with sections 46(5) and 53 (2) of the *Act*, due to the failure of the tenant to take either of these actions within five days, I find the tenant is conclusively presumed to have accepted the end of this tenancy on June 11, 2018, the corrected effective date on the 10 Day Notice. In this case, the tenant and anyone on the premises were required to vacate the premises by June 11, 2018. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Based on the landlord's evidence and the testimony of both parties, I find the landlord is entitled to a monetary award of \$4,650.00 for unpaid rent owing from March 2018 to August 2018.

As the landlord gave undisputed testimony that there is no security deposit for this tenancy, I dismiss the landlord's request to keep the security deposit, without leave to reapply.

As the landlord has been successful in this application, I allow them to recover their \$100.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) 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.

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlord's favour in the amount of \$4,750.00, which allows the landlord to recover unpaid rent owing from March 2018 to August 2018 and to recover the filing fee.

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 07, 2018

Residential Tenancy Branch