



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC FFT MT OPRM-DR FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*; and
- a monetary order for unpaid rent and money owed pursuant to section 67.

The tenant requested:

- more time to make an application to cancel the landlord’s 1 Month Notice to End Tenancy for Cause (1 Month Notice) pursuant to section 66;
- cancellation of the landlord’s 1 Month Notice pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

The landlord’s agent LM (‘landlord’) testified in this hearing on behalf of the landlord, and was given full authority to do so. While the landlord attended the hearing by way of conference call, the tenant did not. I waited until 11:10 A.M. to enable the tenant to participate in this scheduled hearing for 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.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the 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.

The landlord gave sworn testimony that the tenant was served with the landlord's application for dispute resolution and evidence by way of registered mail on September 6, 2018. The landlord provided a tracking number in the hearing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed with copies of the landlord's application and evidence on September 11, 2018, five days after mailing. The landlord confirmed receipt of the tenant's application for dispute resolution, and accordingly I find that the landlord was duly served with the tenant's application in accordance with section 89 of the *Act*.

The landlord provided undisputed testimony that the tenant was served with the 10 Day Notice for Unpaid Rent, with an effective date of August 26, 2018, by posting the notice on the tenant's door on August 13, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on August 16, 2018, 3 days after posting.

Although the landlord originally applied for a monetary Order of \$3,780.00 in their initial claim, since they applied another \$1,980.00 in outstanding rent has become owing. I have accepted the landlord's request to amend their original application from \$3,780.00 to \$5,760.00 to reflect this additional rent that was paid by the time this hearing was convened.

Issue(s) to be Decided

Should the tenant be given more time to make an application for dispute resolution?

Should the landlord's 1 Month Notice or 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled a Monetary Order for Unpaid Rent and Money Owed?

Are both parties entitled to recover the filing fee for their applications?

Background and Evidence

The landlord testified regarding the following facts. This fixed-term tenancy began in September 1, 2017 with monthly rent set at \$1,980.00, payable on the first of each month. The landlord collected, and still holds, a security deposit of \$990.00. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice on August 13, 2018 to the tenant, indicating an effective move-out date of August 26, 2018. The landlord testified that the tenant has not paid rent for the months of August and September 2018, as well as outstanding strata fines in the amount of \$1,800.00. The landlord provided documentary evidence to support the fines levied by the strata

against the owner for the tenant's failure to comply with strata bylaws. The landlord is seeking an Order of Possession, as well as a Monetary Order for the unpaid rent and strata fines totalling \$5,760.00.

Analysis

Section 55(1) of the *Act* reads as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In the absence of any evidence or submissions from the tenant, I order the tenant's entire application dismissed without liberty to reapply.

I find that the landlord's 10 Day Notice is valid, and complies with section 52 of the *Act*. Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 10 Day Notice, August 26, 2018. 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.

The landlord provided undisputed evidence that the tenant failed to pay rent for the months of August and September 2018, as well as the strata fines levied for the tenant's failure to comply with strata bylaws. Therefore, I find that the landlord is entitled to \$5,760.00 claimed by the landlord for the money owed by the tenants.

The landlord continues to hold the tenant's security deposit in the amount of \$990.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

As the landlord was successful in their application, I allow the landlord to recover the filing fee for this application.

Conclusion

I dismiss the tenant's entire application without leave to reapply.

I grant an Order of Possession to the landlord effective **two (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 \$4,870.00 Monetary Order in favour of the landlord under the following terms:

Item	Amount
Unpaid Rent for August 2018	\$1,980.00
Unpaid Rent for September 2018	1,980.00
Unpaid Strata Fines	1,800.00
Filing Fee	100.00
Less Security Deposit	-990.00
Total Monetary Order	\$4,870.00

The tenants must be served with this Order as soon as possible. Should the tenants 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: October 10, 2018

Residential Tenancy Branch