



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

On August 27, 2018, the Landlords applied for a Dispute Resolution proceeding seeking an Order of Possession for unpaid rent pursuant to Section 46 of the *Residential Tenancy Act* (the "Act"), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlords attended the hearing; however, the Tenant did not appear. The Landlords provided a solemn affirmation.

The Landlords advised that the Notice of Hearing package was served to the Tenant by registered mail on August 31, 2018 and a receipt was provided to confirm service (the registered mail tracking number is provided on the first page of this decision). In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenant was deemed to have received the Notice of Hearing package.

The Landlords acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession for unpaid rent?
- Are the Landlords entitled to a Monetary Order for unpaid rent?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

The Landlords stated that tenancy started on April 11, 2018 and that rent was \$1,200.00 per month, due on the first of each month. A security deposit of \$600.00 was paid.

The Landlords submitted that the Tenant had not paid July or August 2018 rent in full, so they served the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") to the Tenant on August 15, 2018 by posting it to the door. The Notice indicated that \$2,400.00 was outstanding on August 1, 2018 for July and August 2018 rent. The effective end date of the Notice was August 25, 2018.

The Landlords confirmed that the Tenant did not pay the rent arrears; however, the Tenant did eventually pay \$500.00 on September 7, 2018 and \$800.00 on September 26, 2018.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlords to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

As outlined above, the undisputed evidence is that the rent for July and August 2018 was not paid in full when it was due, nor was it paid within five days of the Tenant being deemed to have received the Notice. In addition, the undisputed evidence is that the Tenant did not dispute the Notice within the five days of being deemed to have received the Notice. As the Landlords' Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlords are entitled to an Order of Possession that takes effect **two days after service of this Order** on the Tenant.

I also find that the Landlords are entitled to compensation for unpaid rent. As such, I award the Landlord a monetary award in the amount outlined below.

As the Landlords were successful in this application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of Section

72 of the *Act*, I allow the Landlords to retain the security deposit in partial satisfaction of the total rent arrears.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

| Item | Amount |
|------------------------------|-------------------|
| July rent arrears | \$1,200.00 |
| August rent arrears | \$1,200.00 |
| September rent arrears | \$1,200.00 |
| Less September rent payments | -\$1,300.00 |
| October rent arrears | \$1,200.00 |
| Less security deposit | -\$600.00 |
| Recovery of Filing Fee | \$100.00 |
| Total Monetary Award | \$3,000.00 |

Conclusion

I grant an Order of Possession to the Landlords **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I provide the Landlords with a Monetary Order in the amount of **\$3,000.00** in the above terms, and 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: October 12, 2018

Residential Tenancy Branch