



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes **Landlord:** OPRM-DR, FFL
 Tenant: CNR

Introduction

This hearing dealt with applications by both parties pursuant to the *Residential Tenancy Act* (“*Act*”).

The landlord sought:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- 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 tenant sought:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

The landlord, the landlord’s agent and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to cross examine one another and to make submissions. The landlord’s agent (the landlord) indicated that they would be the primary speaker for the landlord.

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 tenant acknowledged that they received a copy of the Landlord’s Application for Dispute Resolution (Landlord’s Application) while the landlord acknowledged receiving a copy of the Tenant’s Application for Dispute Resolution (Tenant’s Application). Pursuant to section 89 of the *Act*, I find that both parties are found to have been duly served with each other’s applications.

The tenant acknowledged receipt of the landlord's evidence served with the Landlord's Application and the landlord acknowledged receipt of the tenant's evidence served with the Tenant's Application. In accordance with section 88 of the Act, I find both parties were duly served with each other's evidence.

The tenant acknowledged receipt of the 10 Day Notice, which was posted to the tenant's door on July 20, 2018. In accordance with section 88 of the Act, I find that the tenant was duly served with the 10 Day Notice on July 20, 2018.

The landlord testified that the tenant is still in the rental unit and has not made any payments to the landlord since the 10 Day Notice was issued. At the outset of the hearing the landlord sought to increase their monetary claim from \$2,400.00 to \$5,100.00 to reflect the tenants' failure to pay \$300.00 in monthly rent for February 2018 and \$800.00 in monthly rent for August 2018 and September 2018, the additional months of unpaid rent accrued while 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 landlord's amendment as this was clearly rent that the tenant would have known about and resulted since the landlord submitted their Application for Dispute Resolution.

Issue(s) to be Decided

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

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 the tenant agreed that indicate this tenancy began on or about July 01, 2011, with a monthly rent of \$800.00. The landlord stated that the rent was due on the first day of the month and the tenant stated that there was no agreed upon date for the payment of the monthly rent. The landlord and tenant agreed that no security deposit was paid for this tenancy.

A copy of the signed 10 Day Notice, dated July 20, 2018, for \$2,400.00 in unpaid rent with an effective date of July 30, 2018, was included in the evidence.

The landlord testified that the tenant has not paid the full monthly rent for February 2018 in the amount of \$300.00 and has not paid any rent since May 2018. The landlord stated that they are seeking an Order of Possession and a Monetary Order for the unpaid rent owing for these months.

The tenant confirmed that she has not paid the monthly rent as indicated by the landlord and stated that she is in the process of moving out of the rental unit. The tenant stated that they never had a written tenancy agreement with 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*.

Section 46 of the *Act* requires that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. As I have found the 10 Day Notice was duly served to the tenant on July 20, 2018, I find the tenant had until July 25, 2018, to dispute the 10 Day Notice or to pay the full amount of the arrears.

I find the tenant submitted their Application on July 24, 2018, within the five day time limit permitted under section 46 (4) the *Act*; however, based on the tenant's testimony, I find the tenant has confirmed that they did not pay the monthly rent within the five days allowed by the *Act* or provide any evidence that they had any legal authority under the *Act* to withhold any rent. For the above reasons, I dismiss the Tenant's Application to cancel the landlord's 10 day Notice, without leave to reapply.

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

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(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.

I find the 10 Day Notice complies with section 52 of the *Act*. Based on my decision to dismiss the Tenant's Application and in accordance with section 55(1) of the *Act*, I find 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. I find the landlord is entitled to a monetary award in the amount of \$5,100.00 for unpaid rent owing for February 2018 and from May 2018 to September 2018. As the landlord has been successful in their Application, I allow them to recover the 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. Should the tenant(s) or any occupant 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 \$5,200.00, which allows the landlord to recover \$300.00 in unpaid rent for February 2018 and 800.00 in unpaid rent from May 2018 to September 2018 as well as to recover the filing fee for this application from the tenant. 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: September 17, 2018

Residential Tenancy Branch