



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR MNR FF
Tenant: AS CNR ERP LRE OLC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application for Dispute Resolution was made on August 21, 2018 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was made on July 23, 2018 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order permitting the Tenant to assign or sublet the rental unit;
- and order cancelling a notice to end tenancy for unpaid rent or utilities;
- an order that the Landlord make emergency repairs for health or safety reasons;
- an order suspending or setting conditions on the Landlord’s right to enter the rental unit; and
- an order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement.

The Landlord and his son, A.K., attended the hearing at the appointed date and time, and provided affirmed testimony. The Tenant did not attend the hearing. As the Tenant did not attend the hearing, the Tenant’s Application is dismissed, without leave to reapply. It has not been considered further in this Decision.

The Landlord testified the Landlord's Application package was served on the Tenant by registered mail. In the absence of evidence to the contrary, I find the Tenant was sufficiently served for the purposes of the *Act*, pursuant to section 71 of the *Act*.

The Landlord and A.K. were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It indicated the fixed-term tenancy began on August 15, 2017, and was expected to continue to August 14, 2018. Rent in the amount of \$1,500.00 per month is due on the 15th day of each month. The Tenant paid a security deposit of \$750.00, which the Landlord holds.

On behalf of the Landlord, A.K. testified the Tenant did not pay rent when due on July 15, 2018. Accordingly, the Landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 20, 2018 (the "10 Day Notice"), which was served on the Tenant by registered mail on July 20, 2018. A Proof of Service document was submitted into evidence in support of service in this manner, and the Tenant's Application confirms receipt of the 10 Day Notice on July 23, 2018. A copy of the 10 Day Notice was submitted into evidence.

In addition, A.K. testified the Tenant did not pay rent when due on August 15 and September 15, 2018, and that rent in the amount of \$4,500.00 is currently outstanding. The Tenant continues to occupy the rental unit.

The Landlord also sought to recover the filing fee paid to make the Application.

Analysis

Based on all of the above, the evidence and unchallenged testimony, and on a balance of probabilities, I find as follows.

Section 26 of the *Act* confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. Further, section 46 of the *Act* permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due by issuing a notice to end tenancy for unpaid rent. A tenant has five days after receipt of a notice to end tenancy for unpaid rent to pay the overdue rent or dispute the notice by making an application for dispute resolution. Failure to pay the overdue rent or dispute the notice results in the conclusive presumption that the tenancy ends on the effective date of the notice.

In this case, I find the Tenant received the 10 Day Notice on July 23, 2018, 3 days after it was served by registered mail. Accordingly, the Tenant had until July 28, 2018, to pay rent in full or make an application for dispute resolution. Although the Tenant's Application was made on July 23, 2018, A.K. testified, and I find, that rent in the amount of \$4,500.00 remains outstanding. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

In addition, I find the Landlord has demonstrated an entitlement to a monetary award of \$4,500.00 for unpaid rent. Having been successful, I also grant the Landlord a monetary award in the amount of \$100.00 in recovery of the filing fee. I also find it is appropriate in the circumstances to order that the security deposit held be applied to the amount due to the Landlord. Therefore, pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$3,850.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$4,500.00
Filing fee:	\$100.00
LESS security deposit:	(\$750.00)
TOTAL:	\$3,850.00

Conclusion

The Tenant's Application is dismissed, without leave to reapply.

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$3,850.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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