



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **Landlord:** OPR, MNRL-S, 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 tenant did not attend this hearing, although I waited until 9:42 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rules 7.1 and 7.3 of the Rules of Procedure provides as follows:

Commencement of the hearing - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord acknowledged receipt of the Tenant's Application for Dispute Resolution (the Tenant's Application) which was left in the mailbox at the landlord's office. In accordance with section 71 of the *Act*, I find that the landlord was duly served with the Tenant's Application.

The landlord gave undisputed affirmed testimony that the Landlord's Application for Dispute Resolution (the Landlord's Application) and evidence was sent to the tenant by registered mail. In accordance with section 88 and 89 of the Act, I find that the tenant is duly served with the Landlord's Application and evidence.

At the outset of the hearing the landlord sought to increase their monetary claim from \$980.00 to \$1,095.00 to reflect the tenant's payment of \$865.00 received on September 10, 2018, and the tenant's failure to pay \$980.00 in monthly rent for September 2018, the additional month 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.

Issue(s) to be Decided

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

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

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

The landlord gave written evidence that this tenancy began on July 01, 2016, with a monthly rent of \$980.00, due on the first day of each month. The landlord testified that they continue to retain a security deposit in the amount of \$490.00.

A copy of the signed 10 Day Notice dated August 09, 2018, identifying \$980.00 in rent owing for this tenancy, with an effective date of August 19, 2018, was included in the landlord's evidence.

The landlord testified that the tenant is still in the rental unit and only made a partial payment towards the amount owing on the 10 Day Notice while not paying the monthly rent for September 2018.

The Landlord's Application for a monetary award of \$1,095.00 is for the \$115.00 in unpaid rent owing for August 2018 to and \$980.00 in unpaid rent owing for September 2018.

Analysis

As the tenant disputed the 10 Day Notice on August 13, 2018, and indicated that they received the 10 Day Notice on August 09, 2018, I find that they are duly served with it.

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

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the *Act*. I find that the 10 Day Notice complies with section 52 of the *Act*. For these reasons, I grant a two day Order of Possession to the landlord.

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 written evidence and undisputed affirmed testimony, I find that the landlord is entitled to a monetary award of \$1,095.00 for unpaid rent owing for this tenancy August 2018 and September 2018.

Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord has been successful in this application, I also allow them to recover their 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 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 under the following terms, which allows the landlord to recover unpaid rent, to retain the tenant's security deposit and to recover the filing fee:

Item	Amount
Balance of Unpaid August 2018 Rent	\$115.00
Unpaid September 2018 Rent	980.00
Less Security Deposit	-490.00
Filing Fee for this application	100.00
Total Monetary Order	\$705.00

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 28, 2018

Residential Tenancy Branch