



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

This hearing dealt with an application by the landlord for the following:

- An order for possession pursuant to section 46;
- A monetary order for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by teleconference. The landlord's agent RB appeared for the landlord ("the landlord"). The landlord provided affirmed testimony. The landlord was given the opportunity to make submissions as well as present oral and written evidence.

The tenant did not attend the hearing. I kept the teleconference line open from the time the hearing was scheduled for ten minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant had been provided.

The landlord testified the tenant was served with the Application for Dispute Resolution and supporting documents pursuant to Section 89 of the *Act* by registered mail on July 23, 2018. The landlord provided the Canada Post tracking number for the registered mail. Pursuant to Section 90, I find the tenant was served on July 28, 2018, the 5th day after mailing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to section 46 of the *Act*?
Is the landlord entitled to a monetary order pursuant to section 67 of the *Act*?
Is the landlord entitled to retain the security deposit pursuant to section 72 of the *Act*?
Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The landlord testified that the parties entered into a signed residential tenancy agreement commencing November 1, 2016 for rent of \$1,000.00 a month payable on the first of the month. The landlord submitted a copy of the agreement signed by both parties in which the tenant agreed to pay \$35.00 for each late rent payment.

At the start of the tenancy, the landlord testified the tenant paid a security deposit of \$500.00 which is held by the landlord. The tenant has not provided any written authorization to the landlord to retain the deposit.

The landlord issued a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten-Day Notice") which was posted on the tenant's door on July 6, 2018, thereby affecting service under section 90 on July 9, 2018, claiming unpaid rent of \$3,855.00. The landlord filed a witnessed Proof of Service Notice to End Tenancy form.

A copy of the Ten-Day Notice with an effective vacancy date of July 15, 2018 (corrected to July 19, 2018) was submitted as evidence. The Notice requires the tenant to pay the rent and utilities to the landlord or file an Application for Dispute Resolution within five days, that is, by July 14, 2018.

The landlord testified the tenant did not pay the rent owing or file an Application for Dispute resolution by July 14, 2018.

The landlord testified the tenant paid \$750.00 on July 27, 2018 on the outstanding rent. The tenant has made no subsequent payments and continues to reside in the rental unit.

The landlord submitted a monetary worksheet as well as a ledger listing all payments made by the tenant. The landlord provided uncontradicted testimony that rent is owing

in the amount of \$3,900.00 plus \$105.00 for late fees for a total of \$4,005.00. The landlord requests a monetary order in this amount.

Analysis

I have reviewed all documentary evidence and testimony.

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*.

I find the tenant was served with the Ten-Day Notice on July 9, 2018 in accordance with sections 88 and 90 of the *Act*.

I find the tenant did not pay the overdue rent or dispute the Ten-Day Notice within the five-day period following service.

Therefore, pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice (being the corrected date of July 19, 2018) requiring the tenant to vacate the rental unit by that date.

As the tenant continues to occupy the unit, I find the landlord is entitled to an order of possession under section 46, effective two days after service.

Based on the uncontradicted evidence of the landlord, I find the landlord is entitled to a Monetary Order pursuant to section 67 in the amount of \$4,005.00 for unpaid rent and late charges. I award the landlord reimbursement of the \$100.00 filing fee.

Further to the offsetting provisions of section 72, the landlord is entitled to apply the security deposit of \$500.00 to the monetary award.

A summary of my monetary finding follows:

ITEM	AMOUNT
Award to landlord for outstanding rent and late charges	\$4,005.00
Reimbursement of filing fee	\$100.00
(Less security deposit)	(\$500.00)
Monetary Order	\$3,605.00

Conclusion

I grant a monetary order to the landlord in the amount of **\$3,605.00**

This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

I also grant the landlord an order of possession effective two days after service on the tenant.

This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be 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: September 17, 2018

Residential Tenancy Branch