



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

This participatory hearing was convened after the issuance of a July 24, 2018, interim decision by an Adjudicator. The Adjudicator determined that the landlords' application could not be considered by way of the Residential Tenancy Branch's (RTB) direct request proceedings, as had been originally requested by the landlord. Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter.

The Adjudicator reconvened the landlords' application to a participatory hearing for the following:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*;
- a monetary order for unpaid rent pursuant to section 67 of the *Act*; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was scheduled for 11:00AM September 14, 2018. Due to technical difficulties with the teleconferencing system, the hearing could not proceed. Both the landlord and tenant were notified of the rescheduling of the hearing to 1:00PM. The tenant did not attend the hearing although I left the teleconference line open until the hearing concluded.

Rules 7.1 and 7.3 of the RTB 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 attended the hearing and was given a full opportunity to be heard, to provide testimony, to make submissions and to call witnesses

The landlord provided evidence that the Application for Dispute Resolution (Application), along with all supporting evidence, was served to the tenant by way of registered mail on July 19, 2018, as a part of the direct request proceeding package. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the Application and supporting evidence on July 24, 2018, the fifth day after it was registered mailed.

The landlord testified he sent the tenant a copy of the notice of this adjourned hearing by registered mail on July 27, 2018. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the notice of this hearing on July 30, 2018, the third day after it was registered mailed.

The landlord requested to amend his Application for a monetary award from \$1,200.00 to \$2,400.00 due to rent owing since the 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) was issued to the tenant. Residential Tenancy Branch 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 allowed this amendment to the landlord's monetary application for additional rent as the tenant would have known that additional rent for the rental unit had become owing since the landlord submitted his application for dispute resolution.

Issues to be Decided

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 from the tenant?

Background and Evidence

The landlord provided in his evidence a tenancy agreement for the period of February 1, 2017 to July 30, 2017 signed by the tenant. No security deposit was obtained by the landlord. Monthly rent in the amount of \$1,200 was due the first of the month.

The landlord testified that the tenant has not paid any rent after June 1, 2018.

The landlord provided evidence that on July 3, 2018 he attended at the rental unit and handed the 10 Day Notice for \$1,200.00 in unpaid rent, to an adult who lives with the tenant. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective date of July 13, 2018.

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*.

Based on the landlord's evidence and undisputed testimony, I find that the tenant failed to pay any rent within five days of receiving the 10 Day Notice and did not make an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. I find that, due to the failure of the tenant to take either of these actions within five days, the tenant is conclusively presumed to have accepted the end of this tenancy on July 13, 2018, the effective date on the 10 Day Notice pursuant to sections 46(5) and 53(2) of the *Act*. The tenant and anyone on the premises were required to vacate the premises by July 13, 2018. As this has not occurred, I find that 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. Based on the above and the undisputed written evidence and testimony, I find that the landlord is entitled to a monetary award of \$2,400.00 for unpaid rent owing for this tenancy for July 2018 and August 2018.

As the landlord has been successful in this application, I also allow him 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 or anyone 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 and to recover the filing fee:

Item	Amount
Unpaid July 2018 Rent	1,200.00
Unpaid August 2018 Rent	1,200.00
Filing fee for this Application	100.00
Total Monetary Order	\$2,500.00

The landlord is provided with this Order 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 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