



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

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; and
- a monetary order for unpaid rent pursuant to section 67.

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; and
- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47.

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, only the relevant 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 which was served with the Landlord's Application. In accordance with section 88 of the Act, I find the tenant is duly served with the landlord's evidence.

The tenant stated that they did not provide any evidence to the landlord although they did provide a copy of the One Month Notice to the Residential Tenancy Branch that was served to them by the landlord. As the landlord is the party who served the One Month Notice to the tenant, I find that they are not prejudiced by its consideration.

The tenant acknowledged receipt of the One Month Notice, which was personally served to the tenant on July 30, 2018. In accordance with section 88 of the Act, I find that the tenant was duly served with the One Month 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 a 10 Day Notice was issued for August 2018. At the outset of the hearing the landlord sought to increase their monetary claim from \$1,050.00 to \$2,100.00 to reflect the tenant's failure to pay \$1,050.00 in monthly rent for September 2018, the additional month of unpaid rent accrued while waiting for this hearing.

The landlord also requested to amend their application to add the filing fee and \$25.00 late fees for August 2018 and September 2018.

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 for September 2018 rent as this was clearly rent that the tenant would have known about and resulted since the landlord submitted their Application for Dispute Resolution.

I do not allow the landlord's requested amendment for late fees and for the filing fee for this application as the tenant was not aware that the landlord would be pursuing these fees, as it was not requested in their Landlord's Application, and I find that the tenant would be prejudiced by their consideration.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? Should the landlord's One Month 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?

Background and Evidence

The landlord provided written evidence this tenancy began on or March 02, 2015, with a current monthly rent of \$1,050.00 and a security deposit in the amount of \$400.00.

A copy of the landlord's signed July 30, 2018, One Month Notice was entered into evidence. In the One Month Notice, requiring the tenant to end this tenancy by August 31, 2018, the landlord cited the following reason for the issuance of the One Month Notice:

Tenant is repeatedly late paying rent.

The landlord also submitted the following evidentiary material:

- A copy of a 10 Day Notice dated January 03, 2018;
- A copy of a 10 Day Notice dated February 02, 2018;
- A copy of a 10 Day Notice dated March 05, 2018;
- A copy of a letter from the landlord dated June 03, 2018, advising the tenant that rent is due on the first of the month and advising of a \$25.00 late fee for late rent;
- A copy of a letter from the landlord dated July 06, 2018, advising the tenant that rent is due on the first of the month and advising of a \$25.00 late fee for late rent;
- A copy of a Tenant Ledger showing the rent owing and paid for this tenancy from January 2018 to July 2018; and
- A copy of a statement from the landlord, dated August 20, 2018, in which the landlord indicates that the tenant has been late paying rent for January 2018, February 2018, March 2018, June 2018 and July 2018.

The landlord testified that the tenant has paid the rent late for January 2018, February 2018, March 2018, June 2018 and July 2018. The landlord indicated that they are seeking to end the tenancy due to the rent being paid late more than three times since January 2018.

The landlord confirmed that the tenant has not paid rent for August 2018 and September 2018.

The tenant admitted that they have been late paying rent for the months that the landlord has indicated and stated that it was due to the new payment portal that the new owner of the property had introduced for the payment of the monthly rent as well as the hours of the landlord's financial institution which does not allow for the tenant to pay the monthly rent when the tenant is working due to business hours.

The tenant stated that he gets paid on the seventh of each month and that he requested for the landlord to change the date that the monthly rent is due but that the landlord did not respond to the tenant's request.

The tenant confirmed that they have not paid the monthly rent for August 2018 and September 2018.

Analysis

Section 47 of the *Act* allows a landlord to issue a One Month Notice to End Tenancy for Cause to a tenant if they are repeatedly late paying the monthly rent.

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice. As the tenant disputed this notice on August 08, 2018, and since I have found that the One Month Notice was served to the tenant on July 30, 2018, I find that the tenant has applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*.

The landlord bears the burden of demonstrating that the tenant has been repeatedly late paying the rent.

I have reviewed all documentary evidence and the affirmed testimony of both parties and I find that the landlord has sufficiently demonstrated that the tenant has been repeatedly late paying the rent.

Residential Tenancy Policy Guideline #38 (PG#38) states that; "Three late payments are the minimum number sufficient to justify a notice under these provisions."

I find that the rent is due on the first day of each month as per the tenancy agreement. I find that that it is undisputed, as the tenant has confirmed in their testimony which is

supported by the 10 Day Notices and the tenant ledger as well as the letters served to the tenant in June 2018/July 2018, to paying the rent late for five of the first seven months in 2018.

For the above reason I find that the landlord has sufficient grounds to issue the One Month Notice and to end this tenancy for cause. Therefore, the Tenant's Application to set aside the One Month Notice is dismissed, without leave 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 One Month 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. As the tenant confirmed that they did not pay the monthly rent for August 2018 and September 2018, I find the landlord is entitled to a monetary award in the amount of \$2,100.00 for unpaid rent owing for those months.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of 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.

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 under the following terms, which allows the landlord to recover unpaid rent and to retain the tenant's security deposit:

Item	Amount
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Unpaid August 2018 Rent	\$1,050.00
Unpaid September 2018 Rent	1,050.00
Less the Security Deposit	-400.00
Total Monetary Order	\$1,700.00

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