



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNRL-S, OPR

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession pursuant to section 46;
- A monetary order for unpaid rent pursuant to section 67;
- An order to retain the security deposit pursuant to section 72;
- A monetary order for compensation pursuant to section 67; and
- Authorization to recover the filing fee for this application from the tenant(s) pursuant to section 72.

The landlord appeared with his counsel RL and his agent MC (“the landlord”). The landlord provided affirmed testimony. The landlord was given the opportunity to make submissions as well as present oral and written evidence.

I kept the teleconference line open from the time the hearing was scheduled, plus an additional fifteen 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 Notice of Hearing and Application for Dispute Resolution by registered mail sent on August 15, 2018 and deemed received by the tenant five days later under section 90, on August 20, 2018. The landlord provided the Canada Post tracking numbers in support of service referenced on the first page of the decision.

Pursuant to sections 89 and 90, I find the tenant was served with the Notice of Hearing and Application for Dispute Resolution on August 20, 2018.

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 tenancy began several years ago. Most recently, the parties entered into a signed residential tenancy agreement for a fixed one-year term commencing May 2, 2017 for monthly rent of \$1,800.00 payable on the first of the month. The landlord submitted a copy of the residential tenancy agreement.

The landlord testified the tenant paid a security deposit of \$875.00 at the beginning of the tenancy relationship which is held by the landlord. The tenant has not provided the landlord with written authorization to apply the deposit to outstanding rent.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten-Day Notice”) dated July 29, 2018, for \$10,600.00 in unpaid rent. A copy of the Ten-Day Notice was submitted as evidence.

The landlord submitted a copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the Ten-Day Notice was posted to the tenant’s door on July 29, 2018 thereby effecting service three days after posting, on August 1, 2018, pursuant to sections 88 and 90.

The Ten-Day Notice provides 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 vacancy date of August 15, 2018. The landlord submitted a copy of the Ten-Day Notice.

The landlord testified the tenant made no payments on outstanding rent after service of the Ten-Day Notice. The landlord provided uncontradicted testimony the full amount claimed remains unpaid and owing to the landlord. The landlord testified additional rent for the months of August and September 2018 was unpaid. The landlord requested an amendment to his claim to increase the amount of the monetary order requested to \$14,200.00.

The landlord testified the tenant continues to occupy the premises.

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 August 1, 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 of August 15, 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.

I therefore grant the landlord an order of possession effective two days after service.

Section 4.2 of the Rules of Procedure provide that a landlord's monetary claim may be amended at the hearing 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. As the landlord's increased claim for outstanding rent in this case could be reasonably anticipated, I grant the landlord an amendment of the amount claimed to increase it to \$14,200.00.

Based on the uncontradicted evidence of the landlord, I grant the landlord a monetary award for outstanding rent in the amount of \$14,200.00.

Further to section 72, I grant the landlord authority to apply the security deposit to the monetary award.

As the landlord was successful in this application, I grant a monetary award in the amount of \$100.00 for reimbursement of the filing fee.

In summary, I grant the landlord a monetary order for **\$13,425.00** calculated as follows:

ITEM	AMOUNT
Award to landlord for outstanding rent	\$14,200.00
Reimbursement of filing fee	\$100.00
(Less security deposit)	(\$875.00)
Monetary Order	\$13,425.00

Conclusion

I grant the landlord a monetary order in the amount of **\$13,425.00**. 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 grant the landlord an order of possession **effective two (2) 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: October 3, 2018

Residential Tenancy Branch