



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- 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 tenants pursuant to section 72.

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 and the landlords' agent (the landlord) attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlords' agent indicated that they would be the primary speaker during the hearing.

Rules 7.1 and 7.3 of the Residential Tenancy Branch Rules of Procedure provides as follows:

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 agent testified that the Application for Dispute Resolution (the Application) and evidentiary package were sent to the tenant by way of registered mail on September 25, 2018. The landlord provided 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 evidentiary package on September 30, 2018, the fifth day after their registered mailing.

The agent gave undisputed affirmed testimony that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was sent by registered mail to the tenant on September 20, 2018. The agent provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88 and 90 of the Act, I find that the 10 Day Notice was deemed served to the tenant on September 12, 2018.

At the outset of the hearing the agent sought to amend their monetary claim from \$2,500.00 to \$7,500.00 due to the fact that \$2,500.00 in monthly rent became owing for October 2018 and November 2018, the additional months 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 allowed this amendment to the landlord's monetary application as this was clearly rent that the tenant would have known about and resulted since the landlord submitted their Application for Dispute Resolution.

Issues(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 recover the filing fee for this application from the tenant?

Background and Evidence

The agent gave written evidence that this tenancy began with other occupants on July 01, 2016, with a monthly rent of \$2,500.00 due on the first day of each month. The agent testified that the other occupants moved out of the rental unit and this tenant had moved sometime during the tenancy, with the first payment in the amount of \$2,500.00 being received from the tenant in April 2018. The agent submitted that the security deposit was returned to the previous occupants.

A copy of the signed 10 Day Notice dated September 07, 2018, identifying \$2,500.00 in unpaid rent owing for this tenancy with an effective date of September 21, 2018, was included in the evidence.

The agent testified that the tenant is still in the rental unit and has not made any payments towards the amount owing on the 10 Day Notice. The landlord submitted that they are seeking an Order of Possession and a monetary award of \$7,500.00 for the unpaid rent owing for September 2018, October 2018 and November 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 undisputed evidence and testimony, I find 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. Due to the failure of the tenant to take either of these actions within five days, I find that the tenant is conclusively presumed to have accepted the end of this tenancy by September 22, 2018, the corrected effective date on the 10 Day Notice pursuant to sections 46(5) and 53(2) of the *Act*. In this case, the tenant and anyone on the premises were required to vacate the premises by September 22, 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 landlord's undisputed written evidence and affirmed testimony, I find the landlord is entitled to a monetary award of \$7,500.00 for unpaid rent owing for September 2018, October 2018 and November 2018.

As the landlord has been successful in this application, I allow them to recover their \$100.00 filing fee from the tenants.

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 recover the filing fee for the Application:

Item	Amount
Unpaid September 2018 Rent	\$2,500.00
Unpaid October 2018 Rent	2,500.00
Unpaid November 2018 Rent	2,500.00
Filing Fee for this Application	100.00
Total Monetary Order	\$7,600.00

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: November 05, 2018

Residential Tenancy Branch