



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRIGHTSIDE COMMUNITY HOMES FOUNDATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

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

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

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:11 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord provided sworn testimony supported by written evidence that they sent the tenant the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by registered mail on September 10, 2018. The landlord provided a copy of the Canada Post Tracking Number on the receipt for this mailing. I find that the tenant was deemed served with this Notice in accordance with sections 88 and 90 of the *Act* on September 15, 2018. The landlord also gave undisputed sworn testimony that they sent the tenant a copy of the tenant's dispute resolution hearing package and written evidence package on October 3, 2018. The landlord provided the Canada Post Tracking Number for this mailing and gave undisputed sworn testimony that this material was returned as unclaimed to the landlord. I find that the tenant was deemed served with this package in accordance with sections 88, 89 and 90 of the *Act* on October 8, 2018.

At the hearing, the landlord testified that the tenant had failed to pay anything further towards this tenancy after receiving the 10 Day Notice, which added another \$1,128.00

in outstanding rent owing for each of October and November 2018, plus \$34.00 for cable and \$13.00 for telephone for each of these months. The landlord asked that the requested monetary award of \$1,756.00 be increased to \$4,106.00 to reflect these outstanding charges. The landlord also applied to recover the \$100.00 filing fee for their application. As the tenant would clearly have been aware that monthly rent and utilities had become due following receipt of the landlord's dispute resolution application, I allow the landlord's request to increase the amount of the monetary award sought by the landlord to \$4,106.00, plus the \$100.00 filing fee.

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 and utilities? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord gave undisputed sworn testimony that this tenancy for a subsidized rental unit began on June 15, 2010, initially as a one-year fixed term tenancy. The tenant's portion of the \$1,128.00 monthly rent payable in advance by the first of each month was \$450.00. The landlord provided written evidence that a \$300.00 security deposit was paid by the tenant on or about June 15, 2010. When the tenant failed to provide income information to the landlord to continue the subsidized rental, the landlord testified that the tenant was required to pay the full monthly rent of \$1,128.00 as of August 1, 2018. The landlord testified that the tenancy agreement also required the tenant to pay \$34.00 each month for cable television and \$13.00 each month for telephone. The landlord said that they did not have a copy of the original tenancy agreement.

The landlord entered into written evidence a copy of the tenant rent ledger, which outlined the amounts owing and paid from January 1, 2018 until October 1, 2018.

The 10 Day Notice identified \$1,756.00 owing as of September 1, 2018.

Analysis

Section 46 (4) (b) of the *Act* provides that upon receipt of a 10 Day Notice to end tenancy the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file an application for dispute resolution within the five days of service granted under section 46 (4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 46 (5) of the *Act* to have accepted that the tenancy ended on September 25, 2018, the corrected effective date of the 10 Day Notice.

Section 46(2) of the *Act* requires that “a notice under this section must comply with section 52 [*form and content of notice to end tenancy*].” I am satisfied that the landlord's 10 Day Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the loss.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.”

Based on the landlord's undisputed sworn evidence and written evidence, I find that the landlord is entitled to a monetary award of \$1,756.00, the amount cited on the 10 Day Notice for amounts owing as of September 1, 2018. As the landlord did not provide a copy of the tenancy agreement showing that the tenant is also responsible for cable and telephone payments, I allow only the unpaid rent payments of \$1,128.00 for each of October and November 2018 to be added to the landlord's original application for a monetary award of \$1,756.00.

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

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(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and the filing fee for this application, and to retain the tenant's security deposit:

Item	Amount
Unpaid Rent Owing as of September 1, 2018	\$1,756.00
Unpaid October 2018 Rent	1,128.00
Unpaid November 2018 Rent	1,128.00
Less Security Deposit	-300.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$3,812.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders 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 13, 2018

Residential Tenancy Branch