



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “*Act*”) for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”).

The Application was initially filed under the Direct Request process, but was scheduled for a participatory hearing as a written tenancy agreement is a requirement of the Direct Request process.

The Landlord was present for the teleconference hearing, while the Tenant did not call in during the approximately 14-minute hearing. The Landlord was affirmed to be truthful in her testimony and testified that she served the Tenant with the Notice of Dispute Resolution Proceeding package, along with copies of her evidence by registered mail.

The registered mail tracking number was submitted into evidence and is included on the front page of this decision. Entering the tracking number on the Canada Post website confirms that the package was claimed by the Tenant. As such, I find that the Tenant was duly served in accordance with Sections 88 and 89 of the *Act*. The Tenant did not submit any documentary evidence prior to the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

The Landlord applied for an Order of Possession only, but during the hearing it became evident that she was also seeking a Monetary Order for unpaid rent. A party has a right to know the claims against them. However, although the Landlord did not apply for monetary compensation on the Application, I find it reasonable that the Tenant would have expected to owe rent due to the receipt of a 10 Day Notice to End Tenancy for Unpaid Rent.

As such, I amend the Application for Dispute Resolution to include a claim for unpaid rent. This amendment was made pursuant to Section 64(3)(c) of the *Act*.

Issues to be Decided

Is the Landlord entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent?

Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The Landlord provided undisputed testimony on the tenancy. The tenancy began in July 2017. Monthly rent in the amount of \$850.00 is due on the first day of each month and a security deposit of \$350.00 was paid at the outset of the tenancy. The Landlord stated that there is no written tenancy agreement.

The Landlord served the Tenant with a 10 Day Notice on October 1, 2018 by posting it on the Tenant's door. The 10 Day Notice was submitted into evidence and states that \$850.00 in rent was not paid as due on September 1, 2018. The effective end of tenancy date of the 10 Day Notice was stated as October 11, 2018.

The Landlord stated that no amount of rent has been paid since the issuance of the 10 Day Notice. Rent was unpaid for September, October and November 2018. The Landlord testified that the Tenant may have moved out of the rental unit last week, but she has not confirmed this yet.

Analysis

I refer to Section 46(1) of the *Act* which states that a 10 Day Notice may be given if rent is not paid by the day it is due. As rent in the amount of \$850.00 was not paid as due on September 1, 2018, the Landlord issued a 10 Day Notice in accordance with Section 46 of the *Act* on October 1, 2018.

In accordance with Section 46(4) of the *Act*, after receiving a 10 Day Notice, a tenant has 5 days in which to file an application to dispute the notice, or to pay the outstanding rent. I accept the testimony and evidence before me and find that the Tenant did not apply to dispute the notice or pay the rent owing in the time provided for under the *Act*.

I determine that the 10 Day Notice is valid and also find that it is in compliance with Section 52 of the *Act*. Therefore, pursuant to Section 55(2) of the *Act*, I issue a two-day Order of Possession to the Landlord.

I also accept the testimony of the Landlord that they have not received any rent for September or October 2018 and award them monetary compensation pursuant to Section 67 of the *Act*. Although the Landlord has also claimed for November 2018, I do not have sufficient evidence before me to determine whether the Tenant was still residing in the rental unit in November 2018, and therefore cannot determine what the Landlord's actual loss was. Both parties are at liberty to file a new Application for Dispute Resolution should there be any outstanding claims from this tenancy.

Pursuant to Section 72 of the *Act*, the Landlord may retain the security deposit towards compensation owed. The Landlord is awarded a Monetary Order in the amount outlined below:

| | |
|--------------------------------|-------------------|
| September 2018 | \$850.00 |
| October 2018 | \$850.00 |
| <i>Less security deposit</i> | <i>(\$350.00)</i> |
| Total owing to Landlord | \$1,350.00 |

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant 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 Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$1,350.00** for rent owed for September and October 2018, after deducting the security deposit that the Landlord may retain. 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 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: November 06, 2018

Residential Tenancy Branch