



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR MNR

Introduction

This hearing was convened in response to applications by the landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- an Order of Possession for non-payment of rent and utilities pursuant to section 55 of the *Act*; and
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*;

Only the landlord attended by way of conference call. The landlord was given full opportunity to be heard, to present evidence and to make submissions.

The landlord provided undisputed testimony that a 10 Day Notice to End Tenancy for Unpaid Rent (“10 Day Notice”) for unpaid rent was given to the tenant on September 25, 2018. Pursuant to sections 88 and 90 of the *Act*, the tenant is deemed served with the 10 Day Notice on September 25, 2018.

The landlord gave undisputed testimony that on October 6, 2018 a copy of the Application for Dispute Resolution hearing package as well as the evidentiary package was handed to the tenant in person. Pursuant to sections 88, 89 and 90 of the *Act*, the tenant was deemed served with the dispute resolution hearing and evidentiary packages on the same day it was given to the tenant, October 6, 2018.

Following opening remarks, the landlord asked to amend his application to reflect unpaid rent for November 2018. As the tenant continues to occupy the rental unit and rent remains unpaid, pursuant to section 64(3)(c), I amend the landlord’s application for a monetary award to include unpaid rent of \$1,600.00 for November 2018.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award?

Background and Evidence

Undisputed testimony from the landlord explained that the tenancy in question began on July 1, 2013. Rent was \$1,600.00 per month and a security deposit of \$300.00 was collected at the outset of the tenancy and continues to be held by the landlord.

The landlord stated the tenant has failed to pay rent from September, October and November 2018. The landlord explained a partial payment of \$250.00 was received on September 26, 2018, while another payment of \$300.00 was made on October 6, 2018.

The landlord is seeking a Monetary Order of \$4,250.00 to recover monies owed for non-payment of rent as follows:

- Unpaid rent for September 2018 - \$1,350.00
- Unpaid rent for October 2018 - \$1,300.00
- Unpaid rent for November 2018 - \$1,600.00

= \$4,250.00

Analysis

The tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days has led to the end of the tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by October 5, 2018. As that has not occurred, 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 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 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.

The landlord provided testimony and written evidence to the hearing, demonstrating that rent was not paid from September, October or November 2018. As part of the landlord's evidentiary

package, detailed ledgers recording the non-payment of rent for this period were supplied to the hearing.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a monetary award of \$3,950.00 for unpaid rent. Using the offsetting provisions contained in section 72 of the *Act*, the landlord may withhold the tenant's security deposit in partial satisfaction for the money owed.

Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

I make a Monetary Order of \$3,950.00 in favour of the landlord as follows:

Amount	Item
Unpaid rent for September 2018	\$1,350.00
Unpaid rent for October 2018	1,300.00
Unpaid rent for November 2018	1,600.00
Less Security Deposit	(-300.00)
Total =	\$3,950.00

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 16, 2018

Residential Tenancy Branch