



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, MNRL-S, FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act") to obtain an order of possession based on a Mutual Agreement to End Tenancy, for a monetary order for unpaid rent or utilities, to retain the tenant's security deposit, and to recover the cost of the filing fee.

The landlord and the spouse of the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence were served on the tenant by personal service at the rental unit on October 15, 2018 at approximately 4:30 p.m. The landlord stated that the tenant signed a piece of paper confirming that she received the documents from the landlord. Based on the above and without any evidence before me to prove to the contrary, I find the tenant was served with the Notice of Hearing, application and documentary evidence on October 15, 2018 as stated by the landlord. As the tenant did not attend the hearing, I find that this application is undisputed and unopposed by the tenant.

Preliminary and Procedural Matters

Firstly, the landlord requested to increase their monetary claim from the original amount of \$4,912.00 to also include loss of rent for November 2018 of \$676.00 as the tenant continues to occupy the rental unit as of this date, November 20, 2018 and refuses to

vacate the rental unit or pay rent. The landlord was advised that loss of November 2018 rent would be included as I find the tenant would not be prejudiced by such an amendment as the tenant would know or ought to have known that by continuing to occupy the rental unit into November 2018 that loss of rent would be suffered by the landlord. This amendment is permitted pursuant to section 64(3) of the *Act*.

The landlord confirmed their email address during the hearing. The landlord confirmed their understanding that the decision would be emailed to the landlord and that any applicable orders would be emailed to the appropriate party. The tenant will be sent the decision by regular mail as the application did not include an email address for the tenant.

Issues to be Decided

- Is the landlord entitled to an order of possession based on a Mutual Agreement to End Tenancy?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The landlord testified that he did not create a written tenancy agreement and that a verbal tenancy agreement was formed with the tenant which began in February or March of 2015. The landlord stated that monthly rent was initially \$650.00 per month and due on the first day of each month and as of April 1, 2018 the landlord raised the monthly rent to \$676.00 via a Notice of Rent Increase form served on the tenant three months prior to the rental increase.

The landlord also submitted a copy of a Mutual Agreement to End Tenancy document signed by the parties on May 13, 2018 in which the parties agree in writing that the tenancy will end on June 15, 2018. The landlord testified that the tenant breached that agreement by failing to vacate the rental unit on June 15, 2018 or any date thereafter as the tenant continues to occupy the rental unit and is not paying rent.

The landlord testified and provided a detailed monetary breakdown of rent owed as follows:

Date Rent Due	Amount of Rent	Amount paid	Amount owed
May 1, 2015	\$650.00	\$0.00	\$650.00
June 1, 2015	\$650.00	\$0.00	\$650.00
July 1, 2015	\$650.00	\$0.00	\$650.00
August 1, 2015	\$650.00	\$0.00	\$650.00
September 1, 2015	\$650.00	\$0.00	\$650.00
October 1, 2015	\$650.00	\$375.00	\$275.00
November 1, 2015	\$650.00	\$375.00	\$275.00
December 1, 2015	\$650.00	\$645.00	\$5.00
April 1, 2018	\$676.00	\$650.00	\$26.00
May 1, 2018	\$676.00	\$650.00	\$26.00
June 1, 2018	\$676.00	\$650.00	\$26.00
July 1, 2018	\$676.00	\$375.00	\$301.00
August 1, 2018	\$676.00	\$650.00	\$26.00
September 1, 2018	\$676.00	\$650.00	\$26.00
October 1, 2018	\$676.00	\$0.00	\$676.00
November 1, 2018	\$676.00	\$0.00	\$676.00
TOTAL OWING IN UNPAID RENT AND LOSS OF RENT			\$5,588.00

In addition, the landlord is also seeking to recover the cost of the filing fee.

Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the landlord during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenant failed to vacate the rental unit in accordance with the signed Mutual Agreement to End Tenancy signed by both parties dated May 13, 2018 with an effective vacancy date of June 15, 2018. Therefore, pursuant to section 55 of the *Act* I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I find the tenant breached section 44(1)(c) of the *Act* which indicates that a tenancy ends in accordance with the written agreement of the landlord and tenant.

I find the tenancy ended on June 15, 2018 as a result of the undisputed evidence before me.

Claim for unpaid rent and loss of rent – I accept the undisputed evidence of the landlord that the tenant has failed to pay a total of \$5,688.00 in unpaid rent and loss of rent. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$5,588.00** comprised of rent arrears and loss of rent as indicated in the table above.

The landlord is holding the tenant's security deposit of \$300.00 which was paid by the tenant at the start of the tenancy and has accrued \$0.00 in interest. As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

Monetary Order – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit plus \$0.00 in interest as follows:

Rent arrears and loss of owed by the tenant	\$5,588.00
Filing fee	\$100.00
Subtotal	\$5,688.00
<i>(Less tenant's security deposit including \$0.00 interest)</i>	<i>-(\$300.00)</i>
TOTAL BALANCE OWING BY TENANT TO LANDLORD	\$5,388.00

Given the above, and pursuant to sections 67 and 72 of the *Act*, **I authorize** the landlord to retain the tenant's full security deposit including \$0.00 in interest of \$300.00 from the \$5,688.00 amount owing to the landlord. Therefore, I grant the landlord a monetary order for the balance owing by the tenant to the landlord in the amount of **\$5,388.00**.

Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

I find the tenancy ended on June 15, 2018.

The landlord has established a total monetary claim of \$5,688.00 as indicated above. The landlord has been authorized to retain the tenant's full security deposit including \$0.00 in interest of \$300.00 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of \$5,388.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 20, 2018

Residential Tenancy Branch