



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNRL, FFL

Introduction

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

- an order of possession for cause and for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 16 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on November 16, 2018, by way of registered mail and in person to the tenant's common law wife, an adult who resides with the tenant. The landlord provided a Canada Post tracking number verbally during the hearing. He also provided a signed proof of service from the tenant's wife. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on November 21, 2018, five days after its registered mailing.

The landlord confirmed that the tenant was served with the landlord's 1 Month Notice to End Tenancy for Cause, dated October 10, 2018 ("1 Month Notice") on October 11, 2018, in person to the tenant's common law wife, an adult who resides with the tenant. The landlord provided a signed proof of service from the tenant's wife. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the landlord's 1 Month Notice on October 11, 2018, by personal service to an adult apparently residing with the tenant.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to ensure that it is pursuant to the *Act*, not the *Manufactured Home Park Tenancy Act*, as the landlord initially applied for this in error. The landlord confirmed that the tenant lives in a house, not a manufactured home. The landlord filed an amendment on November 16, 2018, and provided this to the tenant with his application by way of registered mail and in person to the tenant's common law wife, on the same date. As noted above, I found that the tenant was served with the application, and now the amendment, and that it is not prejudicial to the tenant to make this amendment.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or for cause?

Is the landlord entitled to a monetary order for unpaid rent?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on October 1, 2017. Monthly rent in the amount of \$850.00 is payable on the first day of each month. A security deposit of \$100.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant continues to reside in the rental unit.

The landlord issued the 1 Month Notice indicating that "the tenant is repeatedly late paying rent." The notice indicates an effective move-out date of December 1, 2018. The landlord provided a bank account statement, indicating that the tenant paid rent late more than three times during this tenancy. He testified that the tenant has been late paying rent each month this year, from January to December 2018. He said that the tenant made partial payments for rent throughout the months by directly depositing into a bank account set up for him by the landlord.

The landlord seeks a monetary order of \$350.00 for the remaining outstanding rent for December 2018 as well as recovery of the \$100.00 filing fee.

Analysis

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement. Rent is due on the first day of each month, as per the written tenancy agreement. Residential Tenancy Policy Guideline 38 states that “three late payments are the minimum number sufficient to justify a notice...” The landlord testified that the tenant was late paying rent more than three times during this tenancy. Accordingly, I find that the tenant was repeatedly late paying rent. I find that the landlord’s 1 Month Notice was issued for a valid reason.

I accept the landlord’s testimony that he spoke to the tenant three times in December 2018 to ask when the tenant was vacating the rental unit and making it clear that he would continue to pursue this application at the Residential Tenancy Branch. I find that the landlord did not waive his right to pursue the 1 Month Notice, despite the fact that the tenant continued making rent payments after the effective date of the notice, because rent for December 2018 is still outstanding and the landlord made it clear to the tenant that he had to vacate due to the unpaid rent.

The tenant has not made an application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the failure of the tenant to file an application within ten days led to the end of this tenancy on December 1, 2018, the effective date on the 1 Month Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by December 1, 2018. As this has not occurred, I find that the landlord is entitled to a two (2) Order of Possession, pursuant to section 55 of the *Act*. The tenant has not paid rent in full for December 2018 so he is not entitled to possession of the rental unit until the end of the month. I find that the landlord’s 1 Month Notice complies with section 52 of the *Act*. I issue an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone 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.

As I have issued an order of possession for cause based on the 1 Month Notice, it is not necessary for me to explore the landlord's application for an order of possession for unpaid rent based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"). Accordingly, this portion of the landlord's application is dismissed with leave to reapply.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$350.00 for December 2018. I find that the landlord is entitled to the entire month of rent for December 2018, despite the fact that this hearing was held on December 21, 2018, because rent is due on December 1, 2018, as per the written tenancy agreement. Further, the landlord may be required to serve the tenant with the order of possession and possibly enforce it, enter the rental unit to inspect and potentially repair any damages and attempt to re-rent the unit.

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenant.

The landlord continues to hold the tenant's security deposit of \$100.00. Over the period of this tenancy, no interest is payable on the deposit. Although the landlord did not apply for this, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$100.00 in partial satisfaction of the monetary claim.

Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone 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.

The landlord's application for an order of possession for unpaid rent based on the 10 Day Notice, is dismissed with leave to reapply.

I order the landlord to retain the tenant's entire security deposit of \$100.00 in partial satisfaction of the monetary claim.

I issue a monetary order in the landlord's favour in the amount of \$350.00 against the tenant. 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: December 21, 2018

Residential Tenancy Branch