



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLINE LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 12 minutes. The landlord's agent ("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 confirmed that she was the property manager for the landlord company named in this application and that she had permission to speak on its behalf, as an agent at this hearing.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on November 30, 2018, by way of posting to his rental unit door. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on December 3, 2018, three days after its posting.

I notified the landlord that I could not consider the landlord's monetary application for unpaid rent or to retain the security deposit. These portions of the landlord's application are dismissed with leave to reapply. I informed the landlord that posting the application to the tenant's door is not permitted for monetary applications as per section 89(1) of *Act*. Posting on the door is only permitted as per section 89(2) of the *Act*, for an order of possession claim. Therefore, the hearing and my decision can only deal with the order of possession claim and the landlord agreed to proceed on this basis.

The landlord confirmed that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 16, 2018 ("10 Day Notice"), on the same date by way of posting to his rental unit door. The effective move-out date on the notice is

November 26, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on November 19, 2018, three days after its posting.

Issues to be Decided

Is the landlord entitled to an Order of Possession 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 landlord's documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on August 1, 2018. Monthly rent in the amount of \$1,440.00 is payable on the first day of each month. A security deposit of \$695.00 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 seeks an order of possession against the tenant. The landlord issued the 10 Day Notice for unpaid rent of \$1,440.00 due on November 1, 2018. The landlord testified that the tenant failed to pay rent for November 2018, December 2018 and January 2019 in the amount of \$1,440.00 for each month.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on November 1, 2018, within five days of being deemed to have received the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on November 29, 2018, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by November 29, 2018. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

As the landlord was only partially successful in this application, I find that it is not entitled to recover the \$100.00 filing fee from the tenant.

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 to recover the \$100.00 filing fee is dismissed without leave to reapply.

The landlord's application for a monetary order for unpaid rent and to retain the tenant's security deposit is dismissed with leave to reapply.

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: January 11, 2019

Residential Tenancy Branch