



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application for:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72 of the *Act*; and

The landlord was represented by an agent. The landlord's agent (herein referred to as the "landlord") attended the hearing by way of conference call. The tenant did not attend this hearing, although I waited until 9:10 AM in order to enable the tenant to connect with this teleconference hearing scheduled for 9:00 AM. The landlord's agent attending the hearing was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that on November 21, 2018 the tenant was served the landlord's Application for Dispute Resolution hearing package ("dispute resolution hearing package") by way of personal service via hand-delivery. Based on the testimony of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant was duly served with the dispute resolution hearing package and accompanying evidence and documents on November 21, 2018.

Preliminary Issue – Landlord is a court-appointed receiver

The applicant landlord provided a copy of a court order issued by the Supreme Court of British Columbia, dated July 31, 2017, which provides that the entity listed as the applicant landlord was appointed as the receiver-manager concerning the premises which constitutes the rental unit. As part of the court order, the receiver has liberty to undertake the actions and duties of a landlord as set out in the *Act*. Therefore, I find that for the purpose of the tenancy and application before me, the landlord is correctly identified.

Preliminary Issue – Amendment of Landlord's Application

At the time the landlord's application was submitted, the landlord sought compensation for unpaid rent owed in the amount of \$1,475.00, comprised of the balance of unpaid rent owed for the months of September 2018 and October 2018. At the onset of the hearing, the landlord provided that the tenant had not paid rent the monthly rent in the amount of \$1,200.00 owed for each of November 2018 and December 2018. Accordingly, the landlord wishes to amend her application for a monetary Order to include rent owed for the additional months.

While providing information with respect to the amount of rent owed for November 2018 and December 2018, the landlord provided additional information to clarify the current balance of rent owed. The landlord provided that unpaid rent is owed as follows:

Monthly Rent Outstanding	Amount
September 2018	\$275.00
October 2018	\$700.00
November 2018	\$1,200.00
December 2018	\$1,200.00
Total	\$3,375.00

Pursuant to section 64(3)(c) of the *Act*, and in accordance with rule 4.2 of the Residential Tenancy Branch Rules of Procedure, I amend the landlord's Application to increase the landlord's monetary claim to include rent owed for the months of November 2018 and December 2018, in the amount of \$2,400.00. With the inclusion of the additional unpaid rent sought above, the landlord's new monetary claim reflects a

cumulative balance of unpaid rent sought in the amount of \$3,375.00, for the period of September 2018 to December 2018.

I find that the tenant is aware that rent is due as per the tenancy agreement in place between the parties. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice for Unpaid Rent, served to her in accordance with the *Act*, required her to vacate earlier, for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay her rent, the landlord would pursue all unpaid rent at this hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below. The landlord provided undisputed evidence at this hearing, as the tenant did not attend.

The landlord testified that she was not certain whether a tenancy agreement was signed by the original landlord and tenant. The landlord gave evidence that the tenancy in question began on March 01 2017, and that the current monthly rent is \$1,200.00 per month, which is due on the first day of each month. In support, however, the landlord provided a tenant ledger indicating a consistent monthly charge of \$1,200.00 from October 2017 to November 2018.

The landlord further provided that a security deposit of \$800.00 was collected at the start of the tenancy; however, the landlord is uncertain as to whether that deposit continued to be held by the original landlord.

The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), dated October 17, 2018 was served to the tenant on October 17, 2018, by way of personal service via hand-delivery. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the Notice on October 17, 2018. The Notice alerted the tenant to unpaid rent owed in the amount of \$1,475.00 by October 01, 2018, and provided an effective date of October 28, 2018.

The landlord submitted into evidence a copy of a Direct Request Monetary Order Worksheet that indicated the tenant made a payment of \$500.00 on November 02, 2018. By way of oral testimony, the landlord has provided that the tenant has failed to pay rent for the subsequent months of November and December 2018 and owes a balance of unpaid rent in the amount of \$3,375.00. The landlord seeks a Monetary Order in that amount.

The landlord testified that the tenant has not provided any payment toward the rent owed and continues to occupy the rental unit. Therefore, the landlord is seeking an Order of Possession.

Additionally, the landlord wishes to recover the filing fee, in the amount of \$100.00, for this application from the tenant.

Analysis

Pursuant to section 46 of the *Act*, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

Subsection 26(1) of the *Act* sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the uncontested testimony provided by the landlord, which depicts that the tenant was not permitted to withhold any portion of the monthly rent owed at any time during the tenancy, either in accordance with the *Act* or by mutual agreement between the parties.

Based on the testimony provided by the landlord, I find that the tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice. 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 led to the end of his tenancy on the effective date of the Notice.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice, October 28, 2018. Therefore, this required the tenant and anyone on the premises to vacate the premises by October 28, 2018. As this has not occurred, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*, as the 10 Day Notice complies with section 52 of the *Act*.

The landlord provided undisputed testimony and evidence demonstrating that the tenant did not provide full payment of rent owed in the amount of \$3,375.00 for the months encompassing the period of September 2018 to December 2018, thereby resulting in rental arrears as set out above.

I accept the uncontested evidence offered by the landlord with respect to the tenant's failure to pay the total rental arrears owed as of December 2018. Therefore, I find that the landlord is entitled to a Monetary Order of \$3,375.00 for unpaid rent.

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

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) 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 find that the landlord is entitled to a monetary Order in the amount of \$3,475.00 for unpaid rent, and for the recovery of the filing fee for this application.

The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: January 03, 2019

Residential Tenancy Branch