



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNRL OPU**

Introduction

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

- an Order of Possession pursuant to sections 46 and 55;
- a monetary order for unpaid rent and unpaid utilities pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:45 p.m. to enable the tenant to call into this hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that she served the Notice of Dispute Hearing package to the tenant by sending via registered mail on November 24, 2018. The landlord provided a Canada Post tracking number as evidence of service. In accordance with sections 89 and 90 of the Act, I find that the tenant was deemed served with the Notice of Dispute Hearing package on November 29, 2018, five days after its mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?
Is the landlord entitled to a monetary award as claimed?
Is the landlord entitled to recover her filing fee?

Preliminary Matters

At the commencement of the hearing, the landlord asked for permission to increase her application for a monetary order to include additional month of unpaid rent for December 2018. The landlord is not requesting unpaid rent for January 2019. I have allowed the landlord's request to amend the application to include unpaid rent for December pursuant to section 64(3)(c) of the *Act* and rule 4.2 of the *Rules of Procedure*.

On December 28, 2018, 10 days before the hearing, the landlord filed an amendment to her application to seek a monetary award for damages to the rental unit. Rules 4.3 and 4.6 of the *Rules of Procedure* require that the landlord must demonstrate to my satisfaction that the tenant was served with the amendment as required by the *Act* and that it was received by the respondent **not less than 14 days before the hearing**. Since the hearing was scheduled for January 7, 2019, I find that the principles of natural justice would be breached if I were to hear any additional claims filed outside of the timelines in accordance with the Rules. In addition, the tenant is still living in the rental unit and any application for compensation for damages is premature. I dismiss the landlord's application for a monetary order for damages with leave to reapply.

Background and Evidence

The landlord gave undisputed sworn testimony:

This tenancy commenced around June of 2017 as a month to month tenancy. A written tenancy agreement was signed, however the landlord alleges that her copy of the tenancy agreement was taken from her car while the landlord was conversing with the tenant's boyfriend.

The tenant was required to pay \$1,200.00 per month in rent on the first day of each month and utilities were not included in the rent. A portion of the tenant's rent was being paid through a third party and the tenant did not pay the remaining amount of rent leading to shortfalls in rent for July, August and September 2018. A security deposit of \$600.00 was given to the landlord but the tenant and landlord agreed to apply that deposit to the rent for the month of June, 2017 so the landlord no longer holds any security deposit.

The landlord served the tenant with the 10 Day Notice to End Tenancy dated September 7, 2018 (Notice) by personally serving the tenant with the Notice on the same date, with an effective vacancy date of September 17, 2018. The Notice indicates that the tenant has failed to pay rent in the amount of \$1,200.00 due on September 1, 2018 and utilities, amount unspecified. On the bottom of the Notice is the signature of the tenant indicating she received it on September 7, 2018.

Utilities were not included in the rent. The landlord made multiple attempts to collect both the rent and utilities from the tenant and provided handwritten invoices dated October 1, 2018 and November 1, 2018 as evidence of written demand for payment of both. A municipal utilities bill, dated October 15, 2018 was also presented as evidence, indicating current charges of \$521.75 and \$1,305.58 in previous charges paid by the landlord.

Analysis

- Order of possession

The tenant has acknowledged receipt of the 10 Day Notice on September 7, 2018 by affixing her signature to the bottom of the form. In accordance with section 88 of the Act, I find that the tenant was duly served with the landlord's 10 Day Notice on September 7, 2018.

Sections 46(4) and (5) of the Act state:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

Based on the landlord's testimony and the Notice before me, I find that the tenant was served with an effective Notice and did not file an application to dispute it within the 5 days. Therefore, the tenant is conclusively presumed to have accepted the tenancy ended on September 17, 2018, the effective date of the Notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to an Order of Possession effective two (2) days after service, pursuant to section 55 of the Act.

- Utilities

I accept the landlord's undisputed testimony that the tenant was responsible for paying the utilities for the rental unit. \$1,305.58 of the municipal utility bill was paid by the landlord for arrears owed on a previous bill; however, I am not satisfied these arrears are the responsibility of the tenant. I do find that the tenant is responsible for the outstanding utilities for the billing period of July 1, 2018 to September 30, 2018 in the amount of \$521.75.

- Unpaid Rent

Based on the landlord's undisputed sworn testimony, I find that the tenant was obligated to pay \$1,200.00 per month in rent. I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$4,140.00.

- Filing fee

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **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.

I issue a monetary order in the landlord's favour in the amount of \$4,240.00 under the following terms:

Item	Amount
Unpaid Utilities July – September 2018	\$521.75
Unpaid Rent July 2018	\$210.00
Unpaid Rent August 2018	\$510.00
Unpaid Rent September 2018	\$510.00
Unpaid Rent October 2018	\$510.00

Unpaid Rent November 2018	\$1,200.00
Unpaid Rent December 2018	\$1,200.00
Filing fee	\$100.00
Total Monetary Order	\$4,761.75

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: January 11, 2019

Residential Tenancy Branch