



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR MNR FF
Tenant: CNR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on January 11, 2019.

The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancel the 10 Day Notice to End Tenancy for Unpaid rent or utilities (the 10 Day Notice);

The Landlord cross-applied for the following relief:

- an Order of Possession based on the 10 Day Notice;
- a monetary order for unpaid rent pursuant to section 67.

Preliminary and Procedural Issues

The Tenant did not attend the hearing. Since the Tenant did not appear at the hearing, I dismiss her application, in full, without leave to reapply.

The Landlord attended the hearing and provided testimony. The Landlord stated that he personally served the Tenant a copy of his Application Package and evidence on December 3, 2018. I find the Tenant received this package on this day.

The Landlord has requested to amend his application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I hereby amend the Landlord's application accordingly.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to have the landlord's 10 Day Notice to End Tenancy cancelled?
 - If not, is the landlord entitled to an Order of Possession
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
- Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The Landlord testified that rent, in the amount of \$1,400.00, is due on the first day of each month. The Landlord testified that he holds a security deposit of \$200.00.

The Landlord testified that he personally served the Tenant with the 10 Day Notice on November 21, 2018. The amount owing at that time was \$4,600.00. The Landlord testified that this amount was based on unpaid rent (the Tenant made several partial payments over the last several months). Since issuing the 10 Day Notice, the Tenant paid \$600.00 on November 28, 2018, which brought the total amount owing down to \$4,000.00 at that time. However, the Tenant has made no other payments, despite living in the rental unit and now owes money for December 2018 and January 2019. The Landlord stated that the Tenant now owes a total of \$6,800.00.

Analysis

The first issue I will address is whether the tenant is entitled to have the landlord's 10 Day Notice cancelled. Although the Tenant filed an application to dispute the 10 Day Notice, her application is dismissed because she failed to attend this hearing.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy (unpaid rent), and be in the approved form.

I find that the 10 Day Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenant.

Next, I turn to the Landlord's request for a Monetary Order for unpaid rent. After considering the evidence before me, I find there is sufficient evidence to demonstrate that the tenant owes and has failed to pay \$6,800.00 in past due rent.

The Landlord requested that they be able to retain the security deposit of \$200.00 to offset the amount of rent owed, and to recover the \$100 filing fee for this application.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent as above	\$6,800.00

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Other:	
Filing fee	\$100.00
Less:	
Security Deposit currently held by Landlord	(\$200.00)
TOTAL:	\$6,700.00
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Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$6,700.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 14, 2019

Residential Tenancy Branch