



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPRM-DR

Introduction

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

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

The landlord originally applied to have this matter dealt with through the Direct Request Process. The Adjudicator deemed it necessary that this matter be heard by way of a participatory hearing. The Adjudicator noted the following in their decision:

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 21, 2018 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Act states a document sent by mail is deemed served on the 5th day after it is mailed. Based on the written submissions of the landlord; I find that the tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the Act.

The tenants did not attend this hearing, although I waited until 9:40 a.m. in order to enable them to connect with this teleconference hearing scheduled for 9:30 a.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 am satisfied that tenant was originally served by the landlord and subsequently served by the Branch to attend today's hearing but chose not to, accordingly; the matter proceeded and concluded in the absence of the tenant.

Issues(s) to be Decided

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

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

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

Background and Evidence

The landlords' agent gave the following testimony. The tenancy began on or about May 1, 2018. Rent in the amount of \$1000.00 is payable in advance on the first day of each month. The landlord collected and still holds a security deposit of \$500.00 from the tenant. The agent testified that the tenant consistently fell behind in paying the rent from the outset of the tenancy. The agent testified that she attempted to work with the tenant but to no avail. The agent testified that on October 19, 2018 the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The agent testified that the amount of unpaid rent at that time was \$1480.00. The agent testified that the tenant has failed to pay any rent since then for the months of November, December and January and the total amount of unpaid rent as of today's hearing is \$4480.00. The agent requests a monetary order and an order of possession.

Analysis

The tenant failed to pay their rent in full within five days of being deemed to have received the 10 Day Notice. The tenant has not made 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 tenants' failure to take either of these actions within five days led to the end of their tenancy on the corrected effective date of the notice.

In this case, this required the tenants to vacate the premises by November 1, 2018. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord is granted an Order of Possession pursuant to Section 55 of the *Act*, which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the undisputed evidence provided by the landlord, I am satisfied that the tenants continue to owe the landlord unpaid rent. I find that the landlord is entitled to

\$4480.00 of unpaid rent. The landlord is also entitled to the recovery of the \$100.00 filing fee.

Although the landlord has not applied to retain the security deposit, using the offsetting provision under Section 72 of the Act, I hereby apply the security deposit against the amount of unpaid rent. The total monetary award is \$4580.00 minus the \$500.00 security deposit amount for a total of \$4080.00.

Conclusion

The landlord is granted an order of possession and a monetary order for \$4080.00. The landlord may retain the security deposit.

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 17, 2019

Residential Tenancy Branch