



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord - OPR, MNRL-S, MNDCL-S, FFL
Tenant – CNR, MT, OLC, FFT

Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* (“Act”).

The landlord sought:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant sought:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- more time to make an application to cancel a notice to end tenancy pursuant to section 66; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:42 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 9:30 a.m.

The landlord’s agent (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.

Rules 7.1 and 7.3 of the Rules of Procedure provides as follows:

Commencement of the hearing - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord testified and provided written evidence that the Landlord's Application for Dispute Resolution (the Landlord's Application), and evidentiary package were sent by registered mail to the tenant on January 11, 2018. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the Landlord's Application and evidentiary package on January 16, 2018.

The landlord acknowledged receipt of the Tenant's Application for Dispute Resolution (the Tenant's Application), Amendment to an Application for Dispute Resolution (the Amendment) and evidence which was sent to them by registered mail. In accordance with sections 88 and 89 of the *Act*, I find that the landlord is duly served with the Tenant's Application and the Amendment.

As the tenant disputed two 10 Day Notices with the Tenant's Application and the Amendment, I find that the 10 Day Notice dated December 02, 2018, and the 10 Day Notice dated January 02, 2019, were duly served to the tenant.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent and for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Is the tenant entitled to any of the other remedies they are seeking under the *Act*?

Background and Evidence

The landlord gave written evidence that this tenancy began on August 01, 2017, with a monthly rent of \$925.00, due on the first day of the month. The landlord testified that they continue to retain a \$462.50 security deposit.

A copy of a signed 10 Day Notice dated December 02, 2018, identifying \$1,964.00 in rent owing for this tenancy, with an effective date of December 12, 2018, and a copy of signed 10 Day Notice dated January 02, 2019, identifying \$1,036.00 in rent and late fees owing for this tenancy, with an effective date of December 12, 2018, were included in the evidence.

A copy of a Notice of Rent Increase form showing the monthly rent was increased to \$962.00 was also provided in evidence.

The landlord confirmed that the tenant paid \$925.00 in monthly rent for November 2018, December 2018 and January 2019 but that the monthly rent is \$962.00 as per the Notice of Rent Increase form. The landlord stated that they are seeking \$37.00 in unpaid rent for those three months in addition to late fees for the same three months in the amount of \$100.00. The landlord stated that they believe the tenant is still in the rental unit.

Analysis

In the absence of any evidence or submissions from the tenant, I order the Tenant's Application dismissed, without liberty to reapply.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the *Act*. I find that the 10 day Notice is in compliance with section 52 of the *Act*. Based on my decision to dismiss the Tenant's Application, and in accordance with section 55(1) of the *Act*, I find that the landlord is entitled to a two (2) day Order of Possession.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Section 7(d) of the *Residential Tenancy Regulations* allows for a \$25.00 administrative fee for each late payment of rent.

Based on the written evidence and undisputed affirmed testimony, I find that the landlord is entitled to a monetary award in the amount of \$186.00 for unpaid rent and late fees for three months of the rent not being paid in full.

$(\$37.00 \times 3 = \$111.00) + (\$25.00 \times 3 = \$75.00) = \$186.00$

As the landlord has been successful in this application, I allow them to recover the filing fee from the tenant in the amount of \$100.00.

Conclusion

The Tenant's Application is dismissed in its entirety, without leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) or any occupant 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.

Pursuant to section 72 of the *Act*, I allow the landlord to retain a portion of the tenant's security deposit in the amount of \$286.00 in full satisfaction of the monetary award. The tenant's security deposit is now reduced to \$176.50.

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 25, 2019

Residential Tenancy Branch