



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROADWAY TERRACE DEVELOPMENTS and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL MNRL-S OPR**

Introduction

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

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- an order that the landlord recover the filing fee pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:15 a.m. to enable the tenant to call into this hearing scheduled for 11:00 a.m.

The landlord attended the hearing represented by AK ("landlord"). The landlord 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.

In accordance with Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* ("Rules"), this hearing was conducted in the absence of the tenant.

The landlord testified that he served the tenant with the Application for Dispute Resolution hearing package and evidence by posting to the tenant's door on January 11, 2019. The action was witnessed by MC and SL. While posting to the door is not a recognized method of service seeking a monetary order, I find the document is sufficiently served pursuant to section 71(2)(c) of the *Act*. The tenant is deemed served with the Application for Dispute Resolution hearing package and the evidence 3 days after posting to the door, or January 14, 2019 pursuant to sections 88 and 90 of the *Act*.

The landlord informed me that the tenant continues to reside in the rental unit after the issuance of the 10 Day Notice on November 24, 2018. The landlord testified that no rent was paid for October, November, December and January and asked to amend his monetary application to reflect this unpaid rent. Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's monetary application to \$3,200.00 in recognition of unpaid rent for the period spanning October 2018 to January 2019.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?
Is the landlord entitled to a monetary award for unpaid rent?
Is the landlord entitled to recover his filing fee?

Background and Evidence

The landlord testified that this tenancy began with a previous landlord. The landlord is unaware whether a tenancy agreement was signed between the parties. The previous landlord gave the landlord a \$400.00 security deposit when landlord A.K. took over management of the property in March of 2017. The tenant is currently paying rent in the amount of \$800.00 per month due on the first day of each month. The tenant has failed to pay rent for the month of October and November 2018 and was in arrears of rent in the amount of \$1,600.00 as of November 23, 2018.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent dated November 23, 2018 ("**Notice**") was served on the tenant by posting it to the tenant's door on November 24, 2018 by SL. Pursuant to sections 89 & 90 of the *Act* the tenant is deemed served with the 10 Day Notice on November 27, 2018, three days after its posting.

The landlord testified that since serving the tenant with the Notice, she has not vacated the rental unit, nor paid any further rent. On January 10, 2019, the landlord applied for dispute resolution seeking unpaid rent for the months of September 2018 to January 2019 in the amount of \$4,000.00. The landlord testified that at the time the Notice was served, the tenant was only in arrears for October and November 2018. He is not seeking to increase his monetary claim to include rent for the month of February 2019.

Analysis - Order of Possession

Section 46 of the *Act* states:

Within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution, the tenant is conclusively presumed to have

accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates by that date.

The tenant failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice, in this case December 2, 2018. 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 has led to the end of the tenancy on December 6, 2018 the corrected effective date of the notice. As the tenant continues to reside in the rental unit, I find that the landlord is entitled to an Order of Possession, effective 2 days after service upon the tenant.

Analysis - Monetary Order

I accept the landlord's undisputed testimony that the tenant was obligated to pay \$800.00 per month rent from October 2018 to January 2019, a span of four (4) months and failed to do so. Section 7(1) of the *Act* states, "If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results." Accordingly, I award the landlord a monetary order in the amount of \$3,200.00 for the period.

As the landlord's application was successful, the landlord is entitled to recover the \$100.00 filing fee for the cost of this application. Pursuant to the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in its entirety in partial satisfaction for a portion of the monetary award granted in his favour.

Conclusion

I find the landlord is entitled to 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.

| Item | Amount |
|-----------------------------|-------------------|
| October 2018 rent | \$800.00 |
| November 2018 rent | \$800.00 |
| December 2018 rent | \$800.00 |
| January 2019 rent | \$800.00 |
| Filing fee | \$100.00 |
| Less Security Deposit | (\$400.00) |
| Total Monetary Order | \$2,900.00 |

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,900.00**. 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: February 21, 2019

Residential Tenancy Branch