



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

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

The landlord's agent (the landlord) and the tenant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord provided written evidence that the Application for Dispute Resolution (the Application) and evidence were served to the tenant by registered mail on December 27, 2018, which the tenant did not dispute. In accordance with sections 88 and 89 of the *Act*, I find the tenant was duly served with the Application and Evidence.

At the outset of the hearing the landlord sought to increase their monetary claim from \$1,645 to \$2,855.00 to reflect the tenant's failure to pay \$1,150.00 in monthly rent and \$30.00 in parking fees for January 2019 and February 2019, the additional months of unpaid rent and parking fees waiting for this hearing.

Residential Tenancy Rule of Procedure 4.2 states that 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 allow the amendment for January 2019 and February 2019 unpaid rent as this was clearly rent that the tenant would have known about and resulted since the landlord submitted their Application for Dispute Resolution.

I do not allow the amendment for parking fees as the landlord's Application is for unpaid rent and the tenant is prejudiced by the inclusion of parking fees as a part of the rent. For this reason, I dismiss the landlord's request for parking fees owing for January 2019 and February 2019, with leave to reapply.

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 tenant?

Background and Evidence

The landlord provided written evidence that this tenancy began on April 01, 2018, with a current monthly rent of \$1,150.00, due on the first day of each month. The landlord testified that they have a security deposit in the amount of \$575.00. The landlord also provided a copy of a Parking Addendum to the Tenancy Agreement for a parking space rented by the tenant in the amount of \$30.00 per month.

A copy of the signed 10 Day Notice, dated December 04, 2018, for \$1,645.00 in unpaid rent and an effective date of December 17, 2018, was included in the landlord's evidence. The tenant did not dispute service of the 10 Day Notice, which the landlord submitted was personally served on December 04, 2018.

A copy of a Monetary Order Worksheet and a copy of a tenant ledger were also submitted by the landlord into written evidence.

The landlord stated that the tenant has only paid \$1,150.00 towards the total of \$1,645.00 in unpaid rent owing since the 10 Day Notice was issued to the tenant. The landlord testified that they are seeking to end the tenancy due to the unpaid rent which continues to not be paid.

The tenant did not dispute the amount of rent owing and confirmed the last two payments made to the landlord in the amounts of \$350.00 on December 10, 2018 and \$800.00 on December 20, 2018, since the 10 Day Notice was issued.

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Having considered the undisputed submission of the landlord and in accordance with section 88 of the *Act*, I find that the tenant is duly served with the 10 Day Notice on December 04, 2018.

Based on the landlord's evidence and the testimony of both parties, I find the tenant failed to pay the full amount of rent owing as stated on the 10 Day Notice within five days of receiving it and did not make an application pursuant to section 46(4) of the *Act* within the same timeframe. In accordance with section 46(5) of the *Act*, due to the failure of the tenant to take either of these actions within five days, I find the tenant is conclusively presumed to have accepted the end of this tenancy on December 17, 2018, the effective date on the 10 Day Notice. In this case, the tenant and anyone on the premises were required to vacate the premises by December 17, 2018. As this has not occurred, 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. Based on the landlord's evidence and the testimony of both parties, I find the landlord is entitled to a monetary award of \$2,795.00 for unpaid rent owing from December 2018 to January 2019.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period. As the landlord has been successful in this application, I allow them to recover their \$100.00 filing fee from the tenant.

Conclusion

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 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.

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, to retain the tenant's security deposit and to recover the filing fee from the tenant:

Item	Amount
Balance of Unpaid December 2018 Rent	495.00
Unpaid January 2019 Rent	1,150.00
Unpaid January 2019 Rent	1,150.00
Less Security Deposit	-575.00
Filing Fee for this Application	100.00
Total Monetary Order	\$2,320.00

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 05, 2019

Residential Tenancy Branch