



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING CHARITABLE
ASSOCIATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: FFL MNRL OPC OPN

Introduction

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

- an Order of Possession for cause, pursuant to section 55;
- an Order of Possession for a mutual agreement to end the tenancy, pursuant to section 55.
- a monetary order for unpaid rent, pursuant to section 67 and
- authorization to recover the filing fee for this application, pursuant to section 72

While the landlord's agent, ST, attended the hearing by way of conference call, the tenant did not. I waited until 9:46 a.m. to enable the tenants to participate in this scheduled hearing for 9:30 a.m. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord's agent testified that the tenant was served with the landlord's application for dispute resolution hearing package and evidence on February 7, 2019, by way of registered mail. The landlord filed an amendment, and served this on the tenant by way of registered mail on February 21, 2019. The landlord provided Canada Post tracking numbers in their evidence package. In accordance with sections 88, 89 and 90 of the Act, I find that the tenant was deemed served with the landlord's application and evidence on February 12 and 26, 2019, five days after mailing.

The landlord's agent testified that the tenant was served with the landlord's 1 Month Notice to End Tenancy for Cause on November 7, 2018, by way of posting to the rental unit door. In accordance with sections 88 and 90 of the Act, I find that the tenant was

deemed served with the landlord's 1 Month Notice on November 10, 2018, three days after its posting.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent and losses pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*?

Background and Evidence

The landlord's agent testified regarding the following facts. This is a month-to-month tenancy began on April 1, 2018, with monthly rent in the amount of \$1,900.00 payable on the first day of each month. The landlord holds a security deposit in the amount of \$450.00. The tenant continues to reside in the rental unit.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause on November 17, 2018. The tenant then signed a Mutual Agreement to End tenancy on November 21, 2018 for the tenancy to end on January 31, 2019 at 1:00 p.m. The landlord provided a copy of this Mutual Agreement in their evidence. The landlord is seeking an Order of Possession as the tenant has not moved out.

The landlord is also seeking a monetary order for unpaid rent as the tenant has failed to pay rent for the months of February and March 2019. The landlord's agent testified that the tenant normally receives financial assistance with her rent, but as the tenancy was to end as of January 31, 2019, this subsidy was no longer in place, and the tenant owes the entire monthly rental amount of \$1,900.00.

Analysis

The landlord's agent, SM, provided undisputed testimony at this hearing, as the tenants did not attend. I find the Mutual Agreement submitted in the landlord's evidence to be valid as it is signed by both parties. I accept the agent's testimony that both parties had mutually agreed to end this tenancy on January 31, 2019 as per section 44(1)(c) of the

Ac, but the tenant has failed to move out. Accordingly, I allow the landlord's application for an Order of Possession.

The landlord's agent provided undisputed evidence that the tenant failed to pay outstanding rent in the amount of \$1,900.00 for the months of February and March 2019. Therefore, I find that the landlord is entitled to \$3,800.00 in rental arrears for the above period.

The landlord continues to hold the tenant's security deposit of \$450.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with section 38 and the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit of \$450.00 in partial satisfaction of the monetary claim.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenants**. Should the tenants 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.

I issue a Monetary Order in the amount of \$3,450.00 in the landlord's favour under the following terms which allows the landlord to retain the security deposit in satisfaction of the landlord's monetary claim:

Item	Amount
Unpaid Rent for February 2019	\$1,900.00
Unpaid Rent for March 2019	1,900.00
Filing Fee	100.00
Security Deposit	-450.00
Total Monetary Order	\$3,450.00

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 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: March 20, 2019

Residential Tenancy Branch