



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDCL-S MNRL-S OPU

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 or utilities, pursuant to section 55;
- a monetary order for unpaid rent or utilities, pursuant to section 67;
- a monetary order for monetary loss or money owed pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

While the landlord attended the hearing by way of conference call, the tenant did not. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was personally served with the landlord's application for dispute resolution hearing package and evidence on February 7, 2019. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the landlord's application and evidence on February 7, 2019.

The landlord testified that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 27, 2019 ("10 Day Notice"), on January 27, 2019, 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 10 Day Notice on January 30, 2019, three days after its posting.

Although the landlord applied for a monetary Order of \$2,516.97 in their initial claim, since they applied another \$1,800.00 in rent has become owing that was not included in their application. The landlord testified that the tenant has paid \$1,400.00 towards this outstanding rent. I have accepted the landlord's request to amend their original

application to reflect this additional unpaid rent that became owing by the time this hearing was convened.

Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation for unpaid rent, or money owed?

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

Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began on November 13, 2018 with rent in the amount of \$600.00, payable every 2 weeks, on the Tuesday. The landlord collected, and still holds a security deposit in the amount of \$600.00 for this tenancy.

The landlord issued the 10 Day Notice on January 27, 2019 as the tenant failed to pay rent in the outstanding rent. The landlord testified that the tenant has made the following payments since the 10 Day Notice was issued: \$600.00 on February 11, 2019, and \$800.00 on March 15, 2019. The tenant still owes \$2,800.00 in outstanding rent.

The landlord is seeking a monetary order as set out in the table below:

Item	Amount
Unpaid Rent for December 4-17, 2018	\$600.00
Unpaid Rent for December 18, 2018- December 31, 2018	600.00
Unpaid Rent for January 1-January 14, 2019	600.00
Unpaid Rent for January 15-28, 2019	600.00
Unpaid Rent for January 29-February 11, 2019	600.00
Unpaid Rent for February 12-25, 2019	600.00
Unpaid Rent for February 26-March 4, 2019	600.00
Money owed for cable box and video on demand	56.97
Money owed that was lent to tenant	60.00
Recovery of Filing Fee	100.00

Less payment on February 11, 2019	-600.00
Less payment on March 5, 2019	-800.00
Less Security Deposit	-600.00
Total Monetary Order Requested	\$2,416.97

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the outstanding rent in full within five days of being served the 10 Day Notice. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of being served the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on January 9, 2019. In this case, this required the tenant and anyone on the premises to vacate the premises by January 9, 2019. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. As the tenant has not moved out, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act* so the landlord may take full possession of the premises.

The landlord provided undisputed evidence that the tenant failed to pay the outstanding rent in the amount of \$2,800.00. Therefore, I find that the landlord is entitled to \$2,800.00 in outstanding rent for this tenancy.

The landlord applied to recover money that was lent to the tenant. As this is not a tenancy related monetary claim, I decline to render a decision on this matter as I have no jurisdiction to consider this matter.

The landlord also applied for money owed related to a cable box and channel subscriptions. I am not satisfied that the landlord had provided sufficient evidence to support the amounts claimed, and therefore this portion of the landlord's monetary claim is dismissed with leave to reapply.

The landlord continues to hold the tenant's security deposit of \$600.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

As the landlord was successful in their application, I find that she is entitled to recover the filing fee for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant 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 \$2,300.00 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent, the filing fee for this application, and also allows the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Item	Amount
Unpaid Rent for December 4-17, 2018	\$600.00
Unpaid Rent for December 18, 2018- December 31, 2018	600.00
Unpaid Rent for January 1-January 14, 2019	600.00
Unpaid Rent for January 15-28, 2019	600.00
Unpaid Rent for January 29-February 11, 2019	600.00
Unpaid Rent for February 12-25, 2019	600.00
Unpaid Rent for February 26-March 4, 2019	600.00
Recovery of Filing Fee	100.00
Less payment on February 11, 2019	-600.00
Less payment on March 5, 2019	-800.00
Less Security Deposit	-600.00
Total Monetary Order Requested	\$2,300.00

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.

I decline to render a decision on the application for money lent to the tenant as I do not have jurisdiction to decide on that matter.

The remaining portion of the landlord's application is dismissed with leave to reapply.

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 19, 2019

Residential Tenancy Branch