



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, OPR, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), for monetary compensation for unpaid rent and unpaid utilities, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord was present for the teleconference hearing while no one called in for the Tenant during the approximately 18-minute duration of the hearing. The Landlord was affirmed to be truthful in his testimony and stated that the Tenant was served in person with the Notice of Dispute Resolution Proceeding package on April 12, 2019. The Landlord submitted a proof of service document signed by a witness which confirms service in person on April 12, 2019.

The Landlord stated that the majority of his evidence was also served to the Tenant at this time, with the exception of proof of payment of the filing fee which was served to the Tenant on April 18, 2019 along with the Tenant’s instructions for the hearing. The Landlord also submitted a proof of service form signed by a witness for the April 18, 2019 service of documents.

Although the Landlord did not submit all of his evidence to the Residential Tenancy Branch at least 14 days prior to the hearing as required by rule 3.14 of the *Rules of Procedure*, I accept the evidence before me that the Tenant was served within the required timeframe on April 12, 2019. As such, I find that the Tenant was duly served in accordance with Sections 88 and 89 of the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the *Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Is the Landlord entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent?

Is the Landlord entitled to a Monetary Order for unpaid rent and/or utilities?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlord provided undisputed testimony regarding the tenancy which was also confirmed by the tenancy agreement and two rent increase notices submitted into evidence. The tenancy began on July 1, 2016. Current monthly rent of \$1,059.00 is due on the first day of each month. As stated in the tenancy agreement, the monthly rent amount includes \$50.00 for utilities, which makes the rent \$1,009.00 per month. The Tenant paid a \$500.00 security deposit at the outset of the tenancy.

The Landlord served the Tenant with a 10 Day Notice on April 2, 2019 by posting the notice on the Tenant's door. The 10 Day Notice was submitted into evidence and states that \$1,009.00 for rent and \$50.00 for utilities were unpaid as due on April 1, 2019. The effective end of tenancy date was stated as April 12, 2019.

The Landlord testified that he has not received any amount of money towards the rent or utilities owing and that he did not receive notification that the Tenant had applied to dispute the 10 Day Notice.

The Landlord submitted that he would like to retain the security deposit towards the amount owing.

Analysis

As stated in Section 46(1) of the *Act*, a landlord may serve a 10 Day Notice if the rent remains unpaid on any day after it is due. Section 26 of the *Act* states that rent must be paid when due as per the tenancy agreement. I accept the undisputed testimony and evidence of the Landlord that rent and utilities were unpaid as due on April 1, 2019 and therefore the 10 Day Notice was served to the Tenant on April 2, 2019.

As stated in Section 46(4) of the *Act*, a tenant has 5 days to pay the rent owing or to apply to dispute the 10 Day Notice. I accept the testimony of the Landlord that the Tenant has not paid any amount towards the rent owing and also find no evidence before me that the Tenant applied to dispute the notice. Therefore, I find that Section 46(5) of the *Act* applies as follows:

- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

Accordingly, I find that the Tenant is conclusively presumed to have accepted that the tenancy has ended. Pursuant to Section 55(2) of the *Act*, I find that the Landlord is entitled to an Order of Possession. I award the Landlord a two-day Order of Possession.

As stated, I accept the testimony of the Landlord that the Tenant owes \$1,009.00 for April 2019 rent and \$50.00 for April 2019 utilities for a total amount owing of \$1,059.00. The Landlord may retain the security deposit towards the total amount owed.

As the Landlord was successful with the application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Landlord is awarded a Monetary Order in the amount outlined below:

April 2019 rent	\$1,009.00
April 2019 utilities	\$50.00
Recovery of filing fee	\$100.00
<i>Less Security deposit</i>	<i>(\$500.00)</i>
Total owing to Landlord	\$659.00

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant 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 Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$659.00** for rent and utilities owed for April 2019 and for the recovery of the filing fee paid for the Application for Dispute Resolution. The Landlord is provided with this Order in the above terms and 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: April 30, 2019

Residential Tenancy Branch