



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: CNR LRE FF
Landlord: OPR MNR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on May 27, 2019. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord attended the hearing. However, the Tenant did not. The Landlord stated that she served the Tenant with her application and evidence in person on April 17, 2019. The Landlord stated she brought with her a third party as a witness. I find the Landlord sufficiently served the Tenant with this package on April 17, 2019.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Preliminary Matters

The hearing was by telephone conference and began promptly, as scheduled, at 9:30 AM Pacific Time on May 27, 2019, as per the Notice of a Dispute Resolution Hearing provided to the parties. The line remained open while the phone system was monitored for 10 minutes and the only participant who called into the hearing during this time was the Landlord who was ready to proceed. The Landlord testified that the Tenant continues to occupy the rental unit and still owes rent.

After the ten minute waiting period, the Tenant's application was **dismissed in full, without leave to reapply**.

Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[My emphasis added]

Under section 55 of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice issued by the Landlord meets the requirements for form and content and the Landlord is entitled to an order of possession, effective 2 days after service.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Landlord testified that rent in the amount of \$915.00 is due on the first of each month. The Landlord stated that the Tenant paid \$140.00 on the first of April 2019, but has not paid any rent since that day. The Landlord stated that the Tenant still owes \$775.00 from April 2019, plus \$915.00 for May 2019. The Landlord stated that the Tenant also owes a \$25.00 late rent fee for April and May of 2019, as per the tenancy agreement. As per the Tenancy Agreement, the Landlord holds a security deposit of \$450.00.

The Landlord stated that the Tenant owes \$1,740.00, as laid out above, for unpaid rent and late fees for April and May of 2019.

The Landlord stated that she served the 10 Day Notice to End Tenancy for Unpaid Rent (in the amount of \$775.00) on April 2, 2019, by posting it to the door of the rental unit.

Analysis

Based on the unchallenged testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

I find there is insufficient evidence the Tenant had any right under the *Act* to withhold rent. With respect to the Landlord's request for a Monetary Order for unpaid rent, I find there is sufficient evidence from the Landlord's documentary evidence and testimony before me to demonstrate that the Tenant owes and has failed to pay \$1,740.00 in rent and late fees.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent as above	\$1,740.00

Other:	
Filing fee	\$100.00
Less:	
Security Deposit currently held by Landlord	(\$450.00)
TOTAL:	\$1,390.00

Conclusion

Pursuant to section 55 of the Act, the Landlord is granted 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.

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$1,390.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: May 28, 2019

Residential Tenancy Branch