



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

The landlord seeks an order of possession for unpaid rent and a monetary order for unpaid rent and for the filing fee, pursuant to sections 55, 67, and 72, respectively, of the *Residential Tenancy Act* (the “Act”).

The landlord applied by way of direct request proceeding on April 4, 2019, which was adjourned to a participatory hearing on May 28, 2019. The landlord attended the hearing, was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The tenant did not attend.

Regarding service, the landlord testified that she served the Notice of Dispute Resolution Proceeding package (the “package”) on the tenant by registered mail. Submitted into evidence was a copy of the Canada Post registered mail tracking information and receipt. Based on the evidence of the landlord I find that the tenant was served in accordance with section 89 of the Act.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred, but only evidence relevant to the issues of this application are considered.

Issues

1. Is the landlord entitled to an order of possession for unpaid rent?
2. Is the landlord entitled to a monetary order for unpaid rent?
3. Is the landlord entitled to a monetary order for the filing fee?

Background and Evidence

The landlord testified that the tenancy began approximately two years ago. Monthly rent is \$1,100.00 and is due on the first day of the month. The tenant paid a security deposit of \$500.00 and a pet damage deposit of \$200.00; the landlord retains both deposits. Submitted into evidence by the landlord was a copy of the written tenancy agreement.

On March 22, 2019, the landlord issued and served a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"; a copy of which was submitted into evidence) for the tenant's failure to pay rent arrears in the amount of \$450.00 that was due on March 1. Service of the 10 Day Notice, effected by being attached to the tenant's door in compliance with section 89(2)(d) of the Act, was witnessed by a third party. A Proof of Service document was also tendered into evidence.

To date, the tenant has not paid the \$450.00 in rent arrears and has also not paid any rent for April or May 2019. He currently owes rent in the amount of \$2,650.00.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

Pursuant to section 46 of the Act, the 10 Day Notice informed the tenant that the 10 Day Notice would be cancelled if they paid rent within five days of service. The 10 Day Notice also explains that the tenant had five days from the date of service to dispute the 10 Day Notice by filing an Application for Dispute Resolution.

The landlord testified, and provided documentary evidence to support her submission, that the tenant did not pay rent when it was due. There is no evidence before me to find that the tenant had a right under the Act to not pay the rent, and, no evidence indicating that he applied to cancel the 10 Day Notice.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving her claim for an order of possession and for a monetary order for unpaid rent. Further, as the landlord was successful in her application I also award her compensation for the filing fee.

I grant the landlord an order of possession, which must be served on the tenant and which is effective two days from the date of service.

I further grant the landlord a monetary award of \$2,750 and a monetary order of \$2,050.00, which is calculated as follows:

CLAIM

AMOUNT

Unpaid rent	\$2,650.00
Filing fee	\$100.00
<i>LESS</i> security and pet damage deposits	<i>(\$700.00)</i>
Total:	\$2,050.00

The landlord is ordered to retain the full amount of the tenant's security and pet damage deposits in partial satisfaction of these awards.

Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenant and which is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I hereby grant the landlord a monetary order in the amount of \$2,050.00, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: May 28, 2019

Residential Tenancy Branch