



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL, FFL; CNR, OLC

Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 2, 2019 ("10 Day Notice"), pursuant to section 46; and
- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62.

The tenant did not attend this hearing, which lasted approximately 10 minutes. The individual landlord ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the owner and managing broker for the landlord company named in this application and that she had permission to speak on its behalf as an agent at this hearing (collectively "landlords").

The landlord testified that the tenant was served with the landlords' application for dispute resolution hearing package on May 13, 2019, by way of registered mail. The landlords provided a Canada Post receipt and tracking number with their application and the landlord confirmed the tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' application on May 18, 2019, five days after its registered mailing.

The landlord testified that she served the tenant with the landlords' 10 Day Notice on May 2, 2019, by way of posting to the tenant's rental unit door. She claimed that someone else witnessed this service and she provided a witnessed, signed proof of service with the landlords'

application. The tenant indicated that he received the notice on May 2, 2019, by way of posting to his door, when he applied to dispute this notice in his application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' 10 Day Notice on May 5, 2019, three days after its posting.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' application to increase the monetary claim to include June 2019 rent of \$650.00. The tenant is aware that rent is due on the first day of each month. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required him to vacate earlier for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay his rent, the landlords would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlords' claim for increased rent, despite the fact that he did not attend this hearing.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the Residential Tenancy Branch *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlords are entitled to an order of possession, provided that the notice meets the requirements of section 52 of the *Act*.

Issues to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to recover the filing fee paid for their application?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on October 1, 2018 for a fixed term to end on June 30, 2019. Monthly rent in the amount of \$650.00 is payable on the first day of each month. A security deposit of \$325.00 was paid by the tenant and the landlords

continue to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant continues to reside in the rental unit.

The landlords seek an order of possession for unpaid rent. The landlord explained that the 10 Day Notice was issued to the tenant for unpaid rent of \$650.00, due on May 1, 2019, which was still unpaid. She stated that the tenant also failed to pay rent of \$650.00 for June 2019.

The landlords seek a monetary order of \$1,300.00 for unpaid rent from May to June 2019, plus recovery of the \$100.00 filing fee paid for their application.

Analysis

The landlord provided undisputed evidence, as the tenant did not attend this hearing. The tenant failed to pay the full rent due on May 1, 2019, within five days of being deemed to have received the 10 Day Notice. The tenant filed an application to dispute the notice on May 13, 2019, pursuant to section 46(4) of the *Act*, which was outside the five day deadline. The tenant did not appear at this hearing in order to provide evidence.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days led to the end of this tenancy on May 15, 2019, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by May 15, 2019. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlords' 10 Day Notice complies with section 52 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month in this case. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlords provided undisputed evidence that the tenant failed to pay rent of \$650.00 for each of May and June 2019, totalling \$1,300.00. Therefore, I find that the landlords are entitled to a monetary order of \$1,300.00 in unpaid rent from the tenant.

The landlords continue to hold the tenant's security deposit of \$325.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's entire security deposit of \$325.00 in partial satisfaction of the monetary award.

As the landlords were successful in his application, I find that they are entitled to recover the \$100.00 application filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlords 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 monetary order in the landlords' favour in the amount of \$1,075.00 against the tenant. 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 order the landlords to retain the tenant's entire security deposit of \$325.00 in partial satisfaction of the monetary award.

The tenant's entire application is dismissed without 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: June 26, 2019

Residential Tenancy Branch