



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

On May 22, 2019, the Landlord applied for a dispute resolution proceeding seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to Section 46 of the *Residential Tenancy Act* (the "Act"), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

M.K. and S.A. attended the hearing as agents for the Landlord. The Tenant attended the hearing as well. All in attendance provided a solemn affirmation.

S.A. advised that the Tenant was served the Notice of Hearing and evidence package by registered mail on May 30, 2019 and the Tenant confirmed receipt of this. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Notice of Hearing and evidence package.

The Tenant advised that he did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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?
- Is the Landlord entitled to apply the security deposit towards the unpaid rent?

- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 6, 2008 and rent was currently established at \$898.00 per month, due on the first day of each month. A security deposit of \$370.00 was also paid. The Landlord submitted a copy of the written tenancy agreement as documentary evidence for consideration.

S.A. testified that the Notice was served by posting it on the Tenant's door on May 2, 2019, and the Tenant confirmed that he received this Notice. She advised that the Notice indicated that \$898.00 was outstanding on May 1, 2019. The Tenant advised that due to financial hardship, he did not pay the rent or dispute the Notice within five days of receiving the Notice. However, all parties agreed that rent for May 2019 was collected on May 20, 2019 for use and occupancy only and rent for June 2019 was collected on June 5, 2019 for use and occupancy only. S.A. advised that they were seeking compensation for July 2019 rent in the amount of **\$898.00**.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is

received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant was deemed to have received the Notice on May 5, 2019, three days after it was posted to the door. According to Section 46(4) of the *Act*, the Tenant has 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the fifth day fell on Friday May 10, 2019, the Tenant must have paid the rent in full or made an Application to dispute the Notice by this date at the latest. As outlined above, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenant being deemed to have received the Notice. Furthermore, there is no evidence before me that the Tenant had a valid reason for withholding the rent pursuant to the *Act*. In addition, the Tenant did not dispute the Notice either. Ultimately, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Section 46 of the *Act*.

I also find that the Landlord is entitled to a monetary award, and I grant the Landlord a Monetary Order in the amount of **\$898.00**, which is comprised of rent owed for the month of July 2019.

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to keep the security deposit in partial satisfaction of the debts.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

July rent	\$898.00
Security deposit	-\$370.00
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$628.00

Conclusion

The Landlord is provided with a formal copy of an Order of Possession effective **two days after service of this Order** on the Tenant. Should the Tenant or any occupant 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.

The Landlord is provided with a Monetary Order in the amount of **\$628.00** 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: July 9, 2019

Residential Tenancy Branch