



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL OPRM-DR**

This hearing dealt with an application by the landlord under the Residential Tenancy Act (the *Act*) for the following:

- An order for possession pursuant to section 46 and 55;
- A monetary order for unpaid rent pursuant to section 67;
- Authorization to recover the filing fee for this application pursuant to section 72.

I conducted this hearing by teleconference. The landlord's agent MLA appeared for the landlord ("the landlord"). The landlord provided affirmed testimony. The landlord made submissions as well as presented oral and written evidence.

The tenant did not attend the hearing. I kept the teleconference line open from the time the hearing was scheduled for ten minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant had been provided.

The landlord testified the landlord served the tenant with the Application for Dispute Resolution and supporting documents pursuant to section 89 of the *Act* by registered mail sent on May 29, 2019. The landlord provided the Canada Post tracking number for the registered mail referenced on the first page of this decision. Pursuant to sections 89 and 90, I find the landlord served the tenant on June 3, 2019, the 5th day after mailing.

Preliminary Issue

At the outset, the landlord requested the following:

- Amendment of the application to include a request for an increase in the monetary award for outstanding rent for the months of June and July 2019 in the amount of \$895.00 each less a payment of \$740.00 for a total monetary award for outstanding rent requested of \$1,945.00, and
- Authorization to apply the security deposit of \$447.50 to the monetary award.

The landlord submitted a copy of the Ten-Day Notice to End Tenancy for Nonpayment of Rent ("the Ten-Day Notice") which included a claim for nonpayment of rent up to and including that date in the amount of \$895.00; the landlord provided affirmed testimony and proof of service of the Ten-Day Notice on the tenant on May 3, 2019 by posting, thereby effecting service under section 90 three days later, that is, on May 6, 2019. The landlord also provided uncontracted affirmed testimony that the tenant had paid \$740.00 for rent accepted outside the five-day period for use and occupancy only and had not paid any rent since that time; as well, rent for the months of June and July 2019 had subsequently accrued.

The landlord submitted testimony that the tenant paid a security deposit of \$447.50 at the beginning of the tenancy which the landlord holds. The tenant has not provided written authorization to the landlord to apply the security deposit to outstanding rent.

Rule 4 of the *Rules of Procedure* allows for the amendment of an application at the hearing in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served.

In consideration of the evidence filed and the testimony of the landlord, further to Rule 4, I find the tenant could reasonably have anticipated that the landlord would claim a monetary order for outstanding rent which accrued following the service of the Ten-Day Notice as well as authorization to apply the security deposit the landlord holds to the monetary award. I accordingly allow the landlord to amend the application as sought.

The landlord clarified the landlord's claim as follows:

ITEM	AMOUNT
Rent May 2019	\$895.00
Rent June 2019	\$895.00
Rent July 2019	\$895.00
Payment accepted for use and occupancy only	(740.00)
Outstanding rent claimed	\$1,945.00

The landlord requested authorization to apply the security deposit to the filing fee as well as to be reimbursed for the filing fee for a total monetary award requested of \$1,597.50 as follows:

ITEM	AMOUNT
Rent outstanding	\$1945.00
Reimbursement of the filing fee	\$100.00
(Less security deposit)	(\$447.50)
Total Monetary Award Requested	\$1,597.50

Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to a monetary order pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the security deposit pursuant to section 72 of the *Act*?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The landlord testified that the parties entered into a signed residential tenancy agreement commencing September 1, 2018. Rent is \$895.00 a month payable on the first of the month. The landlord submitted a copy of the agreement signed by both parties.

The landlord testified the tenant paid a security deposit at the start of the tenancy, of \$447.50 which is held by the landlord. The tenant has not provided any written authorization to the landlord to retain the deposit.

The landlord issued the Ten-Day Notice which the landlord testified the landlord served by posting to the tenant's door on May 3, 2019, thereby affecting service under section 90 on May 6, 2019 claiming unpaid rent of \$895.00. The landlord filed a witnessed Proof of Service Notice to End Tenancy form.

The landlord submitted a copy of the Ten-Day Notice with an effective vacancy date of May 15, 2019 (corrected to May 16, 2019) as evidence. The Notice requires the tenant to pay the rent and utilities to the landlord or file an Application for Dispute Resolution within five days.

The landlord testified the tenant did not pay the rent owing or file an Application for Dispute resolution within five days.

The tenant has made no subsequent payments to the one payment referenced above and continued to reside in the rental unit. The landlord submitted a monetary worksheet in support of the claim for outstanding rent.

The landlord provided uncontradicted testimony that rent is owing in the amount of \$1,945.00

The landlord requested a monetary award for outstanding rent of \$1,945.00 reimbursement of the filing fee of \$100.00 and authorization to apply the security deposit to the monetary award for a total award requested of **\$1,597.00**

The landlord requested an order of possession effective two days after service.

A summary of the landlord's claim follows:

ITEM	AMOUNT
Rent outstanding	\$1,945.00
Reimbursement of the filing fee	\$100.00
(Less security deposit)	(\$447.50)
Total Monetary Award	\$1,597.50

Analysis

I have reviewed all documentary evidence and testimony.

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*.

I find the tenant was served with the Ten-Day Notice on May 6, 2019 in accordance with sections 88 and 90 of the *Act*.

I find the tenant did not pay the overdue rent or dispute the Ten-Day Notice within the five-day period following service.

Therefore, pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice of May 16, 2019 requiring the tenant to vacate the rental unit by that date.

As the tenant continued to occupy the unit, I find the landlord is entitled to an order of possession under section 46, effective two days after service.

Based on the uncontradicted evidence of the landlord, I find the landlord is entitled to a monetary order pursuant to section 67 in the amount of \$1,945.00 for unpaid rent. I award the landlord reimbursement of the \$100.00 filing fee.

Further to the offsetting provisions of section 72, the landlord is entitled to apply the security deposit of \$447.50 to the monetary award.

A summary of my monetary finding follows:

ITEM	AMOUNT
Rent outstanding	\$1,945.00
Reimbursement of the filing fee	\$100.00
(Less security deposit)	(\$447.50)
Total Monetary Award	\$1,597.50

Conclusion

I grant a monetary order to the landlord in the amount of **\$1,597.00**

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.

I also grant the landlord 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 to 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: July 09, 2019

Residential Tenancy Branch