



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S, OPR

Introduction

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

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- authorization to recover the filing fee for this application pursuant to section 72.

The landlord's representative attended the hearing. The landlords had full opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open for the duration of the hearing 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 participant code was provided to the tenant.

The landlord testified that they served the tenant with the Notice of Hearing and Application for Dispute Resolution and the landlord's evidence package by registered mail sent on June 18, 2019 which is deemed to have been received by the tenant five days later, on June 23, 2019, under section 90 of the *Act*. The landlord provided the Canada Post tracking number in support of service referenced on the first page of the decision. Based on the undisputed testimony of the landlord, I find the landlords served the tenant with the documents pursuant to section 89 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession pursuant to section 55?

Are the landlords entitled to a monetary order for unpaid rent pursuant to section 67?

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Are the landlords entitled to recover the filing fee pursuant to section 72?

Background and Evidence

The tenancy started on March 23, 2019. The monthly rent was \$1,650.00 and the tenant paid a \$825.00 security deposit.

The landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") on June 4, 2019. The Ten-Day Notice stated unpaid rent of \$1,650.00 as of June 1, 2019 and a move-out date of June 15, 2019. The landlord testified that the ten-Day Notice was personally served on June 4, 2019. The landlord provided a witnessed proof of service stating that the tenant was served the Ten-day Notice on June 4, 2019.

The tenant paid \$1,650.00 on June 18, 2019 which the landlord testified he accepted as payment for use and occupancy only. The landlord testified that they issued the tenant a receipt which said that the payment was accepted "for use and occupancy only." In addition, the landlord testified that they told the tenant that this payment would not reinstate the tenancy.

The landlord testified that the tenant has not made any other payments and he has not filed an application to dispute the ten-Day Notice. The landlord testified that the tenant still resides in the rental unit.

Analysis

Pursuant to *Residential Tenancy Branch Rules of Procedure* ("RTB Rules"), Rule 6.6 states that the applicant, in this case the landlord, has the onus of proof to prove their case on a balance of probabilities. This means that RTB Rule 6.6 requires the landlord to prove that, more likely than not, the facts occurred as claimed in order to prevail in their claim.

Section 46 of the *Act* states that a landlord may end a tenancy if rent is unpaid after it is due by giving the tenant a ten-day notice to end tenancy. In this matter, the landlord issued a Ten-Day Notice stating unpaid rent of \$1,650.00.

Pursuant to section 46(4) of the *Act*, tenants have five days after receipt of a notice to end a tenancy for unpaid rent to dispute the notice. In this matter, the Ten-Day Notice was served on the tenant by personal service on June 4, 2019 so the tenant had five days until June 9, 2019 to dispute the notice. However, the tenant did not file an application to dispute the notice and the deadline to dispute the notice has expired.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

I also find that the Tenant owes \$1,543.38 for overholding the rental unit for the period of July 1, 2019 to the date of the hearing on July 29, 2019, calculated as described below.

Section 57 of the *Act* defines an "overholding tenant" as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. The section goes on to say a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

In the case before me, as per the Ten-Day Notice; I find the tenancy ended on March 19, 2019. However, I am satisfied from the landlords' undisputed testimony that the tenants continue to overhold the rental unit up to the date of the hearing on May 10, 2019.

Residential Tenancy Policy Guideline #3 states that tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the *Act*, however if tenants remain in possession of the premises (overholds), the tenants will be liable to pay occupation rent on a per diem basis until the landlords recover possession of the premises.

As the tenants remained in the unit from July 1, 2019 until the date of the hearing on July 29, 2019, I find that the landlords are entitled to overholding rent in the amount of \$1,543.38 (ten days at the per diem rate of \$53.22) for July 29, 2019.

Based on the undisputed testimony of the landlord and the tenancy agreement, I find that the landlord holds a security deposit of \$825.00 which may be deducted from the damages owed by the tenants pursuant to section 72(2)(b) of the *Act*.

In addition, since the landlords have been successful this matter, I award the landlords \$100.00 for recovery of the filing fee which may also be deducted from the security deposit pursuant to section 72(2)(b) of the *Act*.

Accordingly, I find that the landlords are entitled to a monetary order of \$818.38, calculated as follows.

| <u>Item</u> | <u>Amount</u> |
|--------------------------------|-----------------|
| April 2019 overholding damages | \$1,543.38 |
| Less security deposit | -\$825.00 |
| Filing fee | \$100.00 |
| Total | \$818.38 |

Conclusion

I find the landlords are entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenants. 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.

I grant the landlords a monetary order in the amount of **\$818.38**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court 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 30, 2019