



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL OPUM-DR

Introduction

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

- an Order of Possession for unpaid rent and utilities, pursuant to section 48;
- a monetary order for unpaid rent and utilities pursuant to section 60; and
- authorization to recover the filing fee for this application, pursuant to section 65.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:16 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was personally served with the dispute resolution hearing package ('Application') and evidence on June 4, 2019. In accordance with sections 88 and 89 of the *Act*, I find that the tenant duly served with the Application and evidence on June 4, 2019. The tenant did not submit any written evidence for this hearing.

The landlord testified that the tenant was served the 10 Day Notice dated June 4, 2019, by posting the notice on the tenant's door on the same date. In accordance with sections 88 and 90 of the *Act*, I find the 10 Day Notice was deemed served on June 7, 2019, three days after its posting. Accordingly, the effective date of the 10 Day Notice is corrected to June 17, 2019.

Although the landlord applied for a monetary Order of \$5,250.00 in their initial claim, the landlord testified that the tenant has failed to pay any rent since January of 2019. Since the filing of the application, another \$2,700.00 in rent has become owing for June 2019 through to August 2019, which was not included in the original application. I have accepted the landlord's request to amend their original application from \$5,250.00 to \$7,950.00 (plus \$100.00 filing fee) to reflect the additional unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent and utilities?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This month-to-month tenancy began in January of 2014, with monthly rent set at \$900.00, payable on the first of the month. The landlord testified that no written tenancy agreement exists. The landlord testified that no security deposit was ever paid for this tenancy.

The landlord issued the 10 Day Notice to the tenant on June 4, 2019 as the tenant had failed to pay rent since January of 2019. As of the hearing date the tenant has not paid any of the outstanding rent, nor has the tenant paid any rent for June through to August 2019. The tenant continues to reside in the rental unit.

The landlord testified that in addition to the unpaid rent, the tenant has not paid any portion of the utilities since January of 2019. The landlord testified that the tenant lives in the upstairs portion of the home, while other tenants reside downstairs. All the tenants share the cost of the utilities. Until August 31, 2019 the tenant had paid the utilities, and received the invoices in her name. The landlord testified that as of September 1, 2019, the utilities were under the landlord's name, and all the tenants were responsible for reimbursing the landlord with their share. The landlord included the utilities statement from September 2017 under the tenant's name with a handwritten note that as of September 1, 2017 the utilities will be under the landlord's name. The landlord is requesting \$150.00 per month for reimbursement of the unpaid utilities for the months of January through to May 2019 in the sum of \$750.00.

The landlord seeks a monetary order of \$7,200.00 for recovery of the unpaid rent for the months of January through to August 2019, \$750.00 for the unpaid utilities, recovery of the filing fee, as well as an Order of Possession.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within 5 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch, or pay the overdue rent. I find that the tenant has failed to do either of these two things, by June 12, 2019, five days after the 10 Day Notice is deemed to have been received by the tenant. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, June 17, 2019.

In this case, this required the tenant and anyone on the premises to vacate the premises by June 17, 2019. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the testimony of the landlord, and the supporting documents respecting matters of rent, I find that the tenant has failed to pay the outstanding rent for January 2019 through to August 2019. I therefore find that the landlord is entitled to the \$7,200.00 in unpaid rent.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them.

Although the landlord's application indicates that a demand letter was served on the tenant on April 1, 2019, I am not satisfied that the landlord had provided sufficient proof of service to support that this was done in compliance with section 46(6) of the *Act*. On this basis, I dismiss the landlord's application to recover the unpaid utilities with leave to reapply.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover half of the \$100.00 filing fee.

Conclusion

I find that the landlord's 10 day Notice dated June 4, 2019 to be valid and effective as of June 17, 2019.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant 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 \$7,250.00 Monetary Order in favour of the landlord, which allows the landlord to recover the unpaid rent for the months of January 2019 through to August 2019, plus half of the filing fee for this application.

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 dismiss the landlord's application for a monetary order for unpaid utilities with 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: August 12, 2019

Residential Tenancy Branch