



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, MNDL-S, FFL

Introduction

On June 27, 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 to this debt pursuant to Section 67 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing 10 minutes after the hearing was scheduled to commence, with K.M. attending as an agent for the Landlord. However, the Tenant did not appear during the 37-minute hearing. All in attendance provided a solemn affirmation.

K.M. confirmed that she served the Tenant the Notice of Hearing package by hand on or around June 30, 2019, with the Landlord as a witness. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Notice of Hearing package.

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?
- Is the Landlord entitled to monetary compensation for unpaid rent?
- Is the Landlord entitled to apply the security deposit towards this debt?

- 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.

K.M. advised that the tenancy started “about a year ago” and rent was established at \$650.00 per month, due on the first day of each month. She stated that a \$300.00 security deposit was paid. The Landlord did not complete a written tenancy agreement with the Tenant.

She testified that the Notice was served by hand to the Tenant on June 6, 2019 and posted on the door on this date as well. The Notice indicated that \$650.00 was outstanding on May 1, 2019. Furthermore, the Notice indicated that the effective end date of the tenancy was June 17, 2019. She advised that the Tenant did not pay June, July, or August 2019 rent and as such, the Landlord is seeking compensation in the amount of the arrears of **\$2,600.00**.

She stated that the Tenant may have vacated the rental unit two days ago, but he did not return the keys. As well, she advised that a female acquaintance of the Tenant is still living in the rental unit.

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 served the Notice by hand on June 6, 2019. 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 June 11, 2019, the Tenant must have made his Application or paid the rent in full by this day 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 receiving the Notice. Moreover, there is no evidence before me that the Tenant had a valid reason for withholding the rent pursuant to the *Act*.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 89 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 Sections 46 and 55 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 **\$2,600.00**.

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.

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

Item	Amount
May 2019 rent arrears	\$650.00
June 2019 rent arrears	\$650.00
July 2019 rent arrears	\$650.00
August 2019 rent arrears	\$650.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$2,700.00

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 **\$2,700.00** 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: August 20, 2019

Residential Tenancy Branch