



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

On July 5, 2019 the Landlord submitted an Application for Dispute Resolution (the “Application”), seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- a monetary order for unpaid rent and utilities;
- an order granting authorization to retain the security deposit;
- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 9:30 A.M. on September 3, 2019 as a teleconference hearing. S.A. appeared on behalf of the Landlord and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 11 minutes before the call ended. 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 S.A. and I were the only persons who had called into this teleconference.

S.A. testified the Application and documentary evidence package was served to the Tenant by registered mail on July 18, 2019. S.A. provided the tracking information in support. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on July 23, 2019, the fifth day after the registered mailing. The Tenant did not submit documentary evidence in response to the Application.

S.A. was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Should the Landlord be authorized to apply the security deposit against their claim, in accordance with Section 38 and 72 of the *Act*?
3. Is the Landlord entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?
4. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

S.A. testified that the tenancy began on January 15, 2019. Rent in the amount of \$1,700.00 is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$850.00, which the Landlord continues to hold. S.A. stated that the Tenant moved out of the rental unit on July 30, 2019. S.A. stated that as a result of the Tenant vacating the rental unit, the Landlord is no longer seeking an order of possession.

S.A. testified the Tenant did not pay rent in the amount of \$1,700.00 when due in May, June and July 2019. Subsequently, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 17, 2019 (the "10 Day Notice"). The 10 Day Notice does not have an effective vacancy date listed. S.A. stated that the 10 Day Notice was served to the Tenant by posting it to the Tenant's door on June 17, 2019.

S.A. stated that the Landlord is also seeking monetary compensation relating to unpaid utilities in the amount of \$1,790.25. The Landlord provided a copy of an overdue annual city utility bill in support. S.A. testified that the Tenant has not paid any amount towards the unpaid rent or utilities since receiving the 10 Day Notice. The Landlord is seeking a monetary award in the amount of \$5,100.00 for unpaid rent as well as \$1,790.25 for unpaid utilities. If successful the Landlord is also seeking the return of the filing fee.

As noted above, the Tenant did not attend the hearing to dispute the Landlord's evidence.

Analysis

Section 26 of the Act explains that the 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. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act.

Section 46 of the Act states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find based on the Landlord's uncontested testimony that the Landlord served the 10 Day Notice dated June 17, 2019 with no effect vacancy date, to the Tenant by posting it to the Tenant's door on June 17, 2019. Pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to be received three days later. I find the Tenant is deemed to have received the 10 Day Notice on June 20, 2019.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant had until June 25, 2019 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept the Landlord's undisputed testimony that after service of the 10 Day Notice, the Tenant failed to pay the remaining balance of rent owing in the amount of \$5,100.00 for May, June and July 2019, before vacating the rental unit on July 31, 2019. I accept that the tenancy has ended and that the Landlord does not require an order of possession.

In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$5,100.00 for the months of May, June and July 2019.

The Landlord has also applied for unpaid utilities in the amount of \$1790.25. I find that the Landlord did not list this amount on the 10 Day Notice. Furthermore, Section 46(6) states the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section if; a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them.

In relation to the unpaid utilities, I find that the Landlord has provided insufficient evidence to demonstrate that the Landlord provide a written demand letter for payment of the utilities. Furthermore, I find that the Landlord did not include the amount of unpaid utilities on the 10 Day Notice. As such, I dismiss this portion of the Landlord's Application with leave to reapply.

Having been partially successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$4,350.50, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$5,100.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(<i>\$850.00</i>)
TOTAL:	\$4,350.00

Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted a monetary order in the amount of \$4,350.00. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: September 03, 2019

Residential Tenancy Branch