



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR-S, FF, CNR, OLC

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his/her/their/its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

The landlord attended the hearing via conference call and provided testimony. The tenant did not attend. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on July 19, 2019. The landlord also stated that the amendment to the application for dispute was served upon the tenant via Canada Post Registered Mail on August 15, 2019. The landlord has provided copies of the Canada Post Customer Receipt(s) and Tracking labels as confirmation. The landlord stated that as of the date of this hearing the tenant still occupies the rental unit and has not paid any rent.

The landlord provided undisputed testimony that she was not served with the tenant's application for dispute and was only made aware of it because of when her own application was filed, the information officer notified her.

I accept the undisputed testimony of the landlord and find that the tenant was properly served as per sections 88 and 89 of the Act. Although the tenant did not attend, I find that the tenant is deemed served as per section 90 of the Act. I note that although the tenant failed to attend, the tenant's filed application confirms that the 10 Day Notice dated July 5, 2019 was posted to her door.

As for the tenant's application, I find that as the tenant did not serve the landlord with the notice of hearing package, the tenant's application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

The landlord's monetary claim concerning estimated costs were dismissed with leave to reapply, as they are based upon costs not yet known by the landlord for:

\$60.00 Estimated Utilities, Gas, August/September 2019

\$45.00 Estimated Utilities, Hydro, August/September 2019

\$70.00 Estimated Utilities, water/sewage, July/August/September 2019

The hearing shall continue on the remaining listed items as per the submitted monetary worksheet dated August 7, 2019.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent/utilities and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on June 1, 2019 on a fixed term tenancy ending on May 31, 2020 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy

agreement dated May 21, 2019. The monthly rent is \$1,250.00 payable on the 1st day of each month. A security deposit of \$625.00 was paid on June 1, 2019.

The landlord seeks an order of possession and a clarified monetary claim of \$3,965.96 which consists of:

\$1,250.00	Unpaid Rent, July 2019
\$60.00	Unpaid Utilities, Gas, June/July 2019
\$43.61	Unpaid Utilities, Hydro, June/July 2019
\$12.35	Unpaid water/sewage, June 2019
\$2,500.00	Loss of Rental Income, August/September 2019
\$100.00	Filing Fee

The landlord stated that the tenant was served with a 10 Day Notice dated July 5, 2019 that states that the tenant failed to pay rent of \$1,250.00 that was due on July 1, 2019 and that the tenant failed to pay unpaid utilities of \$30.00 after having been served a written demand letter for payment on June 27, 2019.

The landlord stated that the tenancy agreement provides for the tenant to pay 40% of total utilities (gas, hydro and water). The landlord has submitted in support of these claims:

- Signed Tenancy Agreement dated May 21, 2019
- Signed Addendum to the Tenancy Agreement dated June 4, 2019
- 10 Day Notice dated July 5, 2019
- 10 Day Notice, Proof of Service
- Canada Post Customer Receipt and Tracking Label
- Copies of all utility invoices

Analysis

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

I accept the undisputed evidence of the landlord and find that the tenant was properly served with the 10 Day Notice dated July 5, 2019 by posting it to the rental unit door. I find that the tenant still occupies the rental unit and the landlord has provided undisputed testimony that the tenant has failed to pay any rent since the notice was served and still occupies the rental unit.

Pursuant to section 46 (5) of the Act, the tenant having failed to pay the rent within the allowed 5 day period and having failed to file an application for dispute of that notice is conclusively

presumed to have accepted that the tenancy was at an end. The landlord is granted an order of possession for unpaid rent/utilities.

As for the monetary claim, I accept the landlord's undisputed evidence and find that the tenant has failed to amount owed for rent and has failed to pay for utilities for the period between June 2019 and the date of this hearing. Based upon the above noted evidence of the landlord's monetary claim, I find that the landlord has established a claim for \$3,965.96 which includes recovery of the \$100.00 filing fee.

In offsetting this claim, I grant the landlord the authority to retain the \$625.00 security deposit in partial satisfaction of this claim.

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$3,340.96.

These orders must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those courts.

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 12, 2019

Residential Tenancy Branch