



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNR FFT OPRM-DR FFL

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord MS applied for:

- An order of possession pursuant to section 55;
- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant named the respondent KK and applied for:

- Cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46;
- Cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) pursuant to section 47; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 10 minutes. The landlord KK (the “landlord”) attended the hearing, confirmed they were also agent for the landlord MS and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was assisted by the building manager.

The landlord gave evidence that they had served the tenant with the 10 Day Notice of August 2, 2019 by posting on the rental unit door on that date. The landlord submitted a signed Proof of Service form into documentary evidence. Based on the evidence I find

that the tenant is deemed served with the 10 Day Notice on August 5, 2019, three days after posting, in accordance with sections 88 and 90 of the *Act*.

The landlord testified that they served the landlord's application for dispute resolution dated August 1, 2017 on the tenant by registered mail sent on that same date. The landlord provided a Canada Post tracking number as evidence of service. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on August 6, 2017, five days after its mailing.

The landlord testified that they served the landlord's application for dispute resolution dated August 16, 2019 by registered mail. The landlord provided a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's application on August 21, 2019, five days after mailing, in accordance with sections 89 and 90 of the *Act*.

During the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed the tenant has failed to pay rent for additional months and that the total arrears as of the date of the hearing is \$2,000.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as additional rent becoming due is reasonably foreseeable, I amend the landlord's Application to increase the monetary claim from \$1,000.00 to \$2,000.00.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? Should the 1 Month Notice be cancelled? Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Is either party entitled to recover the filing fee from the other?

Background and Evidence

This periodic tenancy began in January, 2019. The monthly rent is \$1,000.00 payable on the first of each month. A security deposit of \$500.00 was collected at the start of the tenancy and is still held by the landlord.

The landlord testified that the tenant failed to pay rent for the month of August 2019. The landlord issued a 10 Day Notice on August 2, 2019. No payments have been received towards the arrears. As of the date of the hearing, September 16, 2019, the total amount of the rental arrear is \$2,000.00.

Analysis

The tenant did not attend the hearing which was scheduled by conference call at 9:30am. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Consequently I dismiss the tenant's application without leave to reapply.

Section 55 of the *Act* provides that:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application, and I find that the landlord's 10 Day Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provide the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end, I find that the landlord is entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the

agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the tenant was obligated to pay the \$1,000.00 monthly rent in accordance with the signed tenancy agreement. I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$2,000.00. Therefore, I issue a monetary award in the landlord's favour for unpaid rent of \$2,000.00 as at September 16, 2019, the date of the hearing, pursuant to section 67 of the *Act*.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$500.00 in partial satisfaction of the monetary award issued in the landlord's favour.

As the landlord was successful in their application they may recover the \$100.00 filing fee from the tenant.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone 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.

I issue a monetary order in the landlord's favour in the amount of \$1,600.00 under the following terms, which allows the landlords to recover unpaid rent for their application:

Item	Amount
Unpaid Rent August	\$1,000.00
Unpaid Rent September	\$1,000.00
Less Security Deposit	-\$500.00
Filing Fee	\$100.00
Total Monetary Order	\$1,600.00

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: September 16, 2019

Residential Tenancy Branch