



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), for monetary compensation for unpaid rent, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord, Landlord’s spouse and an agent for the Landlord (collectively, the “Landlord”) were present for the hearing while no one called in for the Tenant. The parties were affirmed to be truthful in their testimony and stated that they served the Tenant with the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence by registered mail. The registered mail tracking information was submitted into evidence and the tracking number is included on the front page of this decision. Entering the tracking number on the Canada Post website confirms that the package was delivered on August 29, 2019. As such, I find that the Tenant was served in accordance with Section 89 of the *Act* on August 29, 2019.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

The Landlord filed the Application for Dispute Resolution seeking compensation for outstanding rent for July and August 2019. However, at the hearing they stated that they were also seeking rent for September 2019. As the Tenant would have reasonably expected that rent would be due on September 1, 2019 while waiting for the scheduled

hearing, I find it reasonable to amend the application to add an additional month of rent to the Landlord's claim. As such, pursuant to Section 64(3)(c) of the *Act*, I amend the Landlord's application to increase their monetary claim by \$1,050.00, the amount they stated is owing from September 2019 rent.

Issues to be Decided

Is the Landlord entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent?

Is the Landlord entitled to a Monetary Order for unpaid rent?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlord provided undisputed testimony on the tenancy. The tenancy started on June 1, 2019. Rent in the amount of \$1,050.00 is due on the first day of each month. A security deposit of \$500.00 was paid at the outset of the tenancy. There is no written tenancy agreement.

The Landlord stated that they posted the 10 Day Notice on the Tenant's door on August 4, 2019. They submitted photos of the notice on the door as well as a signed witness statement confirming service on the Tenant's door on August 4, 2019.

A copy of the 10 Day Notice was submitted into evidence and states that \$1,400.00 was unpaid as due on July 1, 2019. The Landlord testified that the Tenant paid \$1,050.00 for June 2019 rent, paid \$700.00 on July 12, 2019 towards July 2019 rent and did not pay any amount of rent for August 2019 or September 2019. The Landlord confirmed that they did not receive any notification that the Tenant had applied to dispute the 10 Day Notice and that they did not receive any money towards unpaid rent since serving the 10 Day Notice to the Tenant.

Therefore, the Landlord stated that they are seeking \$350.00 for July 2019 rent, \$1,050.00 for August 2019 rent, and \$1,050.00 for September 2019 rent for a total of \$2,450.00. The Landlord requested to retain the security deposit towards the unpaid rent owing.

Analysis

As stated in Section 38(4) of the *Act*, after receiving a 10 Day Notice, a tenant has 5 days to file an application to dispute the notice or to pay the outstanding rent. I accept the evidence before me that the Tenant was served with the 10 Day Notice on August 4, 2019 by posting the notice on the Tenant's door. Therefore, in accordance with the deeming provisions of Section 90 of the *Act*, I find that the Tenant is deemed to have received the 10 Day Notice three days later on August 7, 2019.

I also accept the testimony of the Landlord and find no evidence before me that the Tenant applied to dispute the notice or paid the outstanding rent. Therefore, I find that Section 46(5) of the *Act* applies as follows:

- (5) 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
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

As the Tenant is conclusively presumed to have accepted that the tenancy ends in accordance with the 10 Day Notice, pursuant to Section 55(2) of the *Act*, I find that the Landlord is entitled to an Order of Possession. Upon review of the form and content of the 10 Day Notice pursuant to Section 52 of the *Act*, I find that the 10 Day Notice states that \$1,400.00 was unpaid as due on July 1, 2019, when it should state August 1, 2019. However, I find that as the Tenant was served the notice on August 4, 2019 the Tenant would have reasonably known that they owed \$1,400.00 as of that date. Therefore, pursuant to Section 68 of the *Act*, I find it reasonable to amend the 10 Day Notice to state that \$1,400.00 was owing as of August 1, 2019. I grant the Landlord a 2-day Order of Possession for service upon the Tenant.

Regarding the unpaid rent, I accept the affirmed and undisputed testimony of the Landlord and find that they are owed an amount of \$350.00 for July 2019, \$1,050.00 for August and September 2019 rent, for total rent owing in the amount of \$2,450.00.

As the Landlord was successful with their application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee paid for the application in the amount of \$100.00.

The Landlord may retain the security deposit towards the amount found to be owing and therefore is granted a Monetary Order in the amount outlined below:

July 2019 rent	\$350.00
August 2019 rent	\$1,050.00
September 2019 rent	\$1,050.00
Recovery of filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$500.00)</i>
Total owing to Landlord	\$2,050.00

Conclusion

Pursuant to Section 55 of the *Act* 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.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$2,050.00** as outlined above. The Landlord is provided with this Order 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: September 23, 2019

Residential Tenancy Branch