



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 6763332 CDA INC. & HOOPP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, OPR, FFL

Introduction

On August 19, 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 or 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 October 11, 2019 as a teleconference hearing. The Landlord’s Agent appeared and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 10 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 the Landlord’s Agent and I were the only persons who had called into this teleconference.

The Landlord’s Agent testified the Application and documentary evidence package was served to the Tenant by registered mail to the Tenant’s forwarding address on August 20, 2019. The Landlord provided a copy of the registered mail receipt 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 August 25, 2019. The Tenant did not submit documentary evidence in response to the Application.

The Landlord's Agent 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

The Landlord's Agent testified that the tenancy began on December 1, 2015. By the end of the tenancy, the Tenant was required to pay rent in the amount of \$1,602.20 which was due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$725.00, which the Tenant consented to the Landlord retaining in relation to cleaning and repairing damages in the rental unit following the end of the tenancy. The Landlord's Agent stated that the tenancy ended on August 10, 2019 after the Tenant vacated the rental unit. As such, the Landlord's Agent stated that the Landlord is no longer seeking an order of possession.

The Landlord's Agent testified the Tenant did not pay rent in the amount of \$1,602.20 when due on August 1, 2019. Subsequently, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 1, 2019 (the "10 Day Notice") with an effective vacancy date of August 10, 2019. The Landlord's Agent stated that the 10 Day Notice was served to the Tenant in person on August 9, 2019.

The Landlord's Agent testified that the Tenant vacated the rental unit on August 10, 2019 at which point the parties completed a condition inspection report. The Landlord's Agent stated that the Tenant provided his forwarding address at this time and consented to the Landlord retaining the full amount of the \$725.00 security deposit for

cleaning and damage. The Landlord submitted a copy of the condition inspection report in support.

The Landlord is seeking a monetary order in the amount of \$1,627.20 for unpaid rent for August 2019 as well as an NSF charge. The Landlord's Agent stated that the Landlord found a new tenant who moved into the rental unit on September 1, 2019. If successful, the Landlord is also seeking the return of the filing fee paid to make the Application.

As noted above, the Tenant did not attend the hearing to dispute the Landlord's Agent'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 Agent's uncontested testimony that the Landlord served the 10 Day Notice dated August 1, 2019 with an effective vacancy date of August 10, 2019, to the Tenant in person on August 9, 2019. Pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to be received on the same date. I find the Tenant is deemed to have received the 10 Day Notice on August 9, 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 August 14, 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 Agent's undisputed testimony that after service of the 10 Day Notice, the Tenant failed to pay the remaining balance of rent owing for August 2019 and vacated the rental unit on August 10, 2019.

In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$1,602.20 for the month of August 2019, as well as \$25.00 for the NSF charge. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application.

I accept that the Tenant consented to the Landlord retaining the security deposit for cleaning and damage, therefore I find that there is no remaining amount of security deposit to award to the Landlord towards their successful monetary claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$1,727.20, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$1,602.20
NSF Charge:	\$25.00
Filing fee:	\$100.00
TOTAL:	\$1,727.20

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 \$1,727.20. 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: October 11, 2019

Residential Tenancy Branch