



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL OPRM-DR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a Monetary Order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 10 minutes. The corporate landlord was represented by its agent (the "landlord") who was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent dated August 6, 2019 (the "10 Day Notice") on that date by placing it in the mail box for the rental unit. The landlord provided a signed Proof of Service form as evidence of service. Based on the evidence I find that the tenant is deemed served with the 10 Day Notice on August 9, 2019, three days after placing in the mail box in accordance with sections 88 and 90 of the *Act*.

The landlord testified that they served the tenant with the notice of hearing and materials by registered mail sent on August 28, 2019. The landlord provided a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials in accordance with sections 88, 89 and 90 of the *Act* on September 2, 2019, five days after mailing.

At the outset of the hearing, the landlord said that since the application was filed the tenant has made some payments towards the arrears and the total arrears as of the

date of the hearing is \$94.77. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as the total amount owing changing with payments being made is reasonably foreseeable, I amend the landlord's Application to decrease the landlord's monetary claim to \$94.77.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to monetary compensation as claimed?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began in October, 2016. The current monthly rent is \$1,065.00 payable on the first of each month. The tenant is also responsible for paying utilities to the landlord. A security deposit of \$520.00 was collected at the start of the tenancy and is still held by the landlord.

There was a rental arrear of \$1,065.00 and utility arrear of \$108.61 as of August 6, 2019, the date of the 10 Day Notice. The landlord said that the tenant did not pay the full amount of the arrears within 5 days of service nor are they aware of the tenant filing for dispute resolution.

The landlord said that the tenant has made some payments against the arrears beginning August 27, 2019 but they were informed that payment was accepted for "use and occupancy only" and written receipts were issued confirming the landlord's intention to seek an Order of Possession.

The landlord testified that as of the date of the hearing the rental arrear is \$94.77.

Analysis

I accept the evidence of the landlord that monthly rent for this tenancy was \$1,065.00 and that there was an arrear of rent of \$1,065.00 and utilities of \$108.61 when the 10 Day Notice was issued. I accept the evidence before me that the tenant failed to pay the full rent and utilities due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenant dispute the 10 Day Notice within that 5 day period. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have

accepted that the tenancy ended on the effective date of the 10 Day Notice, August 19, 2019. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*. As the effective date of the 10 Day Notice has passed I issue an Order of Possession enforceable 2 days after service.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$94.77. I issue a monetary award for unpaid rent owing of \$94.77.00 as at October 18, 2019, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to deduct \$194.77 from the security deposit for this tenancy of \$520.00 in full satisfaction of the monetary award issued in the landlord's favour.

Conclusion

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.

The security deposit for this tenancy is reduced by \$194.77 from \$520.00 to \$325.23.

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 18, 2019

Residential Tenancy Branch