



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC CNR LRE PSF RP FFL OPRM-DR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

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

The tenant requested:

- 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;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70.

While the landlord attended the hearing by way of conference call, the tenant did not. I waited until 11:10 a.m. to enable the tenant to participate in this scheduled hearing for 11:00 a.m. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 and I were the only ones who had called into this teleconference.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

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.

In the absence of any submissions from the tenant in this hearing, I order the tenant's entire application dismissed without liberty to reapply

The landlord gave sworn testimony that on August 14, 2019 he had personally served his application and evidence to the tenant. In accordance with sections 88 and 89 of the *Act*, I find that the tenant duly served with the landlord's application and evidence package.

The landlord provided undisputed testimony that the tenant was personally served with the 10 Day Notice, with an effective date of August 12, 2019, on August 2, 2019. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on August 2, 2019.

Although the landlord applied for a monetary Order of \$1,100.00 in his initial claim, since he applied another \$2,20.00 in rent has become owing that was not included in the original application. I have accepted the landlord's request to amend his original application from \$1,100.00 to \$3,330.00 to reflect this additional unpaid rent that became owing by the time this hearing was convened.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the 10 Day Notice?

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

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

Background and Evidence

The landlord gave undisputed testimony regarding the following facts. This fixed-term tenancy began on September 1, 2018, with monthly rent set at \$1,100.00, payable on the first of every month. The landlord collected, and still holds, a security deposit in the amount of \$550.00.

The landlord issued the 10 Day Notice on August 2, 2019, indicating an effective move-out date of August 12, 2019. A copy of the 10 Day Notice was included in the landlord's evidence. The landlord testified that the tenant has not paid any rent since the 10 Day Notice was issued to the tenant. The landlord testified that the tenant owes rent for the months of August, September,

and October 2019. The total unpaid rent is \$3,300.00. The landlord is seeking an Order of Possession, as well as a Monetary Order for the unpaid rent.

Analysis

Section 55(1) of the *Act* reads as follows:

- 55** (1) 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.

I find that the 10 Day Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 10 Day Notice, August 12, 2019. As the tenant has not moved out, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The landlord provided undisputed evidence that the tenant failed to pay the rent in full for the months of August 2019 through to October 2019. Therefore, I find that the landlord is entitled to \$3,300.00 in arrears for the above period.

The landlord continues to hold the tenant's security deposit in the amount of \$550.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

I find that the landlord is entitled to recovery the \$100.00 filing fee from the tenant.

Conclusion

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

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenants**. 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 \$2,850.00 monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent and the filing fee, and also allows the landlord to retain the tenant's security deposit:

Item	Amount
Unpaid Rent for August 2019	\$1,100.00
Unpaid Rent for September 2019	1,100.00
Unpaid Rent for October 2019	1,100.00
Recovery of Filing Fee	100.00
Less Security Deposit	-550.00
Total Monetary Order	\$2,850.00

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: October 4, 2019

Residential Tenancy Branch