



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, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's application and evidence. In accordance with sections 88 and 89 of the *Act*, I find the tenants duly served with the landlord's application and evidence. The tenants did not submit any written evidence for this hearing.

The tenant confirmed receipt of the 10 Day Notice dated July 30, 2019, which was personally served to the tenants on the same date. I find the tenants duly served with the 10 Day Notice in accordance with section 88 of the *Act*.

The landlord requested an amendment to his claim for additional unpaid rent, as well as for additional monetary losses that were not included in the landlord's original monetary claim. The landlord has not filed any amendments for his application. RTB Policy Guideline #23 states the following about amendments during a hearing:

In accordance with rule 4.2 (Amending an application at the hearing), when the amount of rent owing has increased since the time the application initially was filed, or in other circumstances that can reasonably be anticipated, the application may be amended through an oral request at the hearing. If such an amendment to an application is

sought at a hearing, an Amendment to an Application for Dispute Resolution need not be filed or served.

As the landlord has not filed an amendment to his claim, I will not consider these additional losses as part of the landlord's application. However, as the amount of unpaid rent can reasonably be anticipated, I allow the landlord to include this additional amount in his claim. The landlord applied for a Monetary Order of \$2,570.00 in his initial claim. Since he applied another \$4,800.00 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 \$2,570.00 to \$7,370.00 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 for unpaid rent and utilities?

Is the landlord entitled to monetary compensation for unpaid rent and utilities?

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

Background and Evidence

The tenant testified that this tenancy began in 2007 when he first moved in. The landlord testified that this tenancy began on April 1, 2018, in accordance with the tenancy agreement last signed between the parties. The tenancy agreement was submitted as part of the landlord's evidentiary materials. Both parties confirmed that monthly rent is currently set at \$1,600.00, payable on the first of the month. The tenancy agreement indicates that the tenants are to pay 50 percent of the utilities. The landlord testified that the tenants had never paid a security deposit for this tenancy.

The landlord issued the 10 Day Notice on July 30, 2019 as the tenants have failed to pay the outstanding rent. The landlord is seeking an Order of Possession for unpaid rent, as well as a monetary order as set out below:

Item	Amount
Unpaid Rent for June 2019	\$720.00
Unpaid Rent for July 2019	1,600.00
Unpaid Rent for August 2019	1,600.00
Unpaid Rent for September 2019	1,600.00
Unpaid Rent for October 2019	1,600.00
Unpaid Utilities	250.00

Total Monetary Order	\$7,370.00
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The tenant testified that although they were expected to pay half of the utilities the landlord has charged them \$250.00 without providing the tenants any copies of the invoices or receipts. The tenant admits that he had signed the last tenancy agreement, but testified that the landlord has imposed a number of rent increases that exceed the amount allowed by the *Act*.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch, or pay the outstanding rent. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of the above actions within five days led to the end of this tenancy on August 10, 2019, the effective date of the 10 Day Notice. Accordingly, I find that the tenants are 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,

In this case, this required the tenants and anyone on the premises to vacate the premises by August 10, 2019. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

- 26** (1) A 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.

Although the tenant testified that the landlord had imposed illegal rent increases, I find that the tenants had signed a tenancy agreement agreeing to pay monthly rent in the amount of \$1,600.00. I find that the tenants have failed to pay any outstanding rent since the 10 Day Notice was issued. Accordingly, I allow the landlord to recover the unpaid rent for this tenancy. The landlord is granted a monetary order in the amount of \$7,120.00 for the outstanding rent for the period of June 2019 through to October 2019.

The tenants disputed the landlord's monetary claim for unpaid utilities. As I find that the landlord had not provided sufficient evidence to support that the amount requested is equivalent to the 50 percent agreed to as part of the tenancy agreement, this portion of the landlord's monetary claim is dismissed with leave to reapply.

I allow the landlord to recover the filing fee for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant(s)**. Should the tenants 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 \$7,220.00 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent and the filing fee for this application. The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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.

The landlord's application to recover unpaid utilities is dismissed with leave to reapply.

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