



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNRL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") for an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 2, 2019 ("10 Day Notice"), for a monetary order for unpaid rent or utilities, to retain all or a part of the tenant's security deposit, and to recover the cost of the filing fee.

The landlord and an agent for the landlord PN ("agent") attended the teleconference hearing. During the hearing the landlord and agent were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated August 15, 2019 ("Notice of Hearing"), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence were served on the tenant by personal service on August 17, 2019 between 12:45 p.m. and 1:30 p.m. at the tenant's place of employment, CG. The landlord stated that service was witnessed by PK. Based on the above and without any evidence before me to prove to the contrary, I accept that the tenant was personally served with the Notice of Hearing, application and documentary evidence on August 17, 2019 at CG, as claimed by the landlord. Give the above, I find this matter to be undisputed by the tenant.

Preliminary and Procedural Matters

The landlord testified that in addition to the rent owed for a portion of July 2019 and all of August 2019, the tenant has subsequently not paid the rent for September and October of 2019. As a result, the landlord requested to amend the application to include rent owed for September and October of 2019. The landlord also stated that the tenant continues to occupy the rental unit. I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application pursuant to section 64(3)(c) of the *Act*, from \$2,850.00 to \$5,850.00, which consists of \$1,500.00 rent for September and October of 2019.

Secondly, the landlord and agent stated that the tenant has provided two alias names during the tenancy, and as a result, I also amend the landlord's application to include both names of the tenant to avoid confusion pursuant to sections 62(3) and 64(3) of the *Act*.

Thirdly, the landlord confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the landlord did not have an email address for the tenant, the decision will be emailed to the tenant.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order for unpaid rent or loss of rent under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenant agreement was submitted in evidence. A fixed-term tenancy began on October 1, 2018 and reverted to a month to month tenancy after March 31, 2019. I note there was an obvious error in the end date of the tenancy, which is listed as 2018, and could not be correct as the tenancy began on October 1, 2018. This was confirmed by the landlord. The landlord stated that monthly rent in the amount \$1,500.00 was due

on the first day of each month and that the tenant paid a \$750.00 security deposit at the start of the tenancy, which the landlord continues to hold.

The landlord applied for dispute resolution on August 15, 2019. The landlord testified that the 10 Day Notice was served personally on the tenant at the rental unit on the evening of August 2, 2019. The 10 Day Notice indicates that \$2,850.00 was owed in rent as of August 1, 2019. The landlord stated that the tenant continues to occupy the rental unit and owes \$1,350.00 for the balance of July 2019 rent owing, and all of August, September and October 2019 rent of \$1,500.00 per month. The landlord testified that the tenant did not dispute the 10 Day Notice. The effective vacancy date listed on the 10 Day Notice was August 7, 2019.

The landlord is seeking an order of possession, a monetary order for unpaid rent, to retain the tenant's security deposit towards rent owing, and to recover the cost of the filing fee.

Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the landlord and agent during the hearing, and on the balance of probabilities, I find the following.

Order of possession – I accept the landlord's undisputed testimony and I find that the tenant failed to pay any of the amount claimed by the landlord as owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice on August 2, 2019. The effective vacancy date of the Notice is listed as August 7, 2019, which I find automatically corrects under section 53 of the *Act* to August 12, 2019, which is 10 days after the 10 Day Notice was served personally. I find the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the corrected effective vacancy date of the 10 Day Notice, which was August 12, 2019. The tenant continues to occupy the rental unit. Therefore, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenant. I find the tenancy ended on August 12, 2019 and that the tenant has overheld the rental unit since that date.

Claim for unpaid rent and loss of rent – Firstly, as the tenant was served and did not attend the hearing, I find the application of the landlord to be unopposed by the tenant. I accept the undisputed testimony of the landlord that the tenant owes rent as follows:

ITEM DESCRIPTION	AMOUNT OWED
1. Balance of July 2019 rent owing	\$1,350.00
2. August 2019 unpaid rent	\$1,500.00
3. September 2019 loss of rent	\$1,500.00
4. October 2019 loss of rent	\$1,500.00
TOTAL	\$5,850.00

Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has breached section 26 of the *Act* by failing to comply with a standard term of the tenancy agreement, which stipulates that rent is due monthly on the first day of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$5,850.00** as indicated above.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**, pursuant to section 72 of the *Act*.

The landlord is holding a security deposit of \$750.00, which was paid by the tenant at the start of the tenancy and has accrued no interest since the start of the tenancy.

Monetary Order – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit plus interest as follows:

Rent owing and loss of rent owing by tenant as claimed	\$5,850.00
Filing fee	\$100.00
Subtotal	\$5,950.00
<i>(Less tenant's security deposit including \$0.00 interest)</i>	<i>-(\$750.00)</i>
TOTAL BALANCE OWING BY TENANT TO LANDLORD	\$5,200.00

Pursuant to section 38 and 67 of the *Act*, I grant the landlord authorization to retain the tenant's full \$750.00 security deposit towards the amount owing as described above. I grant the landlord a monetary order pursuant to section 67 of the *Act* in the amount of **\$5,200.00** owing by the tenant to the landlord.

Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. The tenancy ended on August 12, 2019.

The landlord has established a total monetary claim of \$5,950.00 as indicated above. The landlord is authorized to retain the tenant's full security deposit of \$750.00 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of \$5,200.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The decision and orders will be emailed to the landlord for service on the tenant. The tenant will be sent the decision by regular mail as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 8, 2019

Residential Tenancy Branch