



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNRL-S OPR

Introduction

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

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing. The landlord had full opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open for the duration of the hearing to allow the tenant the opportunity to call. I confirmed the correct participant code was provided to the tenant.

The landlord testified that he served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on August 19, 2019 which is deemed received by the tenant five days later, August 24, 2019, under section 90 of the *Act*. The landlord provided the Canada Post tracking number in support of service referenced one first page of the decision.

The landlord testified that he served the tenant with his evidence by registered mail sent on September 19, 2019. The landlord provided the Canada Post tracking number in support of service referenced one first page of the decision.

Based on the undisputed testimony of the landlord, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution and the landlord's evidence pursuant to section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession pursuant to section 55?

Is the landlord entitled to a monetary order for unpaid rent pursuant to section 67?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The landlord testified that the tenancy started in February 2013. The monthly rent was \$600.00 due on the first day of each month and the tenant paid a \$300.00 security deposit.

The landlord testified that the tenant has not paid any rent for July 2019 or any subsequent rental period. The landlord testified that he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") on the tenant's door at 6:00 p.m. on July 5, 2019. The landlord provided a witnessed proof of service evidencing service of the Ten-Day Notice.

The Ten-Day Notice stated unpaid rent of \$600.00 as of July 1, 2019. The Ten-Day Notice stated a move-out date July 31, 2019. The landlord testified that the tenant did not pay the amount demanded in the Ten-Day Notice. The landlord testified that the tenant is still occupying the rental unit. The landlord has requested an order of possession, a monetary order for unpaid rent since July 2019 and reimbursement of the filing fee.

Analysis

Pursuant to *Residential Tenancy Branch Rules of Procedure* ("RTB Rules"), Rule 6.6 states that the applicant, in this case the landlord, has the onus of proof to prove their case on a balance of probabilities. This means that RTB Rule 6.6 requires the landlord to prove that, more likely than not, the facts occurred as claimed in order to prevail in their claim.

Section 46 of the *Act* states that a landlord may end a tenancy if rent is unpaid after it is due by giving the tenant a ten-day notice to end tenancy. In this matter, the landlord issued a Ten-Day Notice stating unpaid rent of \$600.00.

Pursuant to section 46(4) of the *Act*, tenants have five days after receipt of a notice to end a tenancy for unpaid rent to dispute the notice. In this matter, the Ten-Day Notice was served on the tenant by posting the notice on the tenant's door on July 5, 2019. Pursuant to section 90 of

the Act, the notice is deemed to have been served three days after posting, being July 8, 2019. Accordingly, the tenant had five days after the deemed date of service of July 13, 2019 to dispute the notice. Furthermore, since July 13m 2019 is a Saturday, the deadline is extended to Monday, July 15, 2019. However, the tenant did not file an application to dispute the notice and the deadline to dispute the notice has expired.

Section 55 of the *Act* states that a landlord may request on order of possession if a notice to end tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Based upon the undisputed testimony of the landlord, I find that the Tenant was obligated to pay the monthly rent in the amount of \$600.00, on time and in full each month, up to and including the rental period commencing July 1, 2019. I find that the tenant has not paid the rent for July 2019.

I find the form and content of the Ten-Day Notice does comply with section 52 of the *Act* and the landlord has established on the balance of probabilities that the unpaid rent stated in the Ten-Day Notice was owing as stated in the notice. Accordingly, I find the landlord is entitled to an order of possession. Based on the request of the landlord, I shall issue the order of possession to be effective seven days after service on the tenant rather than the standard two days of notice.

Further, section 71(1) of the *Act* states that "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results." Pursuant to section 71(1), I find the landlord is entitled to a monetary award of \$600.00 for unpaid rent in July 2019.

I also find that the Tenant owes \$1,354.80 for overholding the rental unit for the period of August 1, 2019 to October 8, 2019, calculated as described below.

Section 57 of the Act defines an "overholding tenant" as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. The section goes on to say a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

In the case before me, as per the Ten-Day Notice; I find the tenancy ended on July 31, 2019. However, I am satisfied from the landlords' undisputed testimony that the tenants continue to overhold the rental unit up to the date of the hearing on October 8, 2019.

Residential Tenancy Policy Guideline #3 states that tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the *Act*, however if tenants remain in

possession of the premises (overholds), the tenants will be liable to pay occupation rent on a per diem basis until the landlords recovers possession of the premises.

As the tenants remained in the unit for the full rental periods of August 1, 2019 to September 30, 2019, the landlords are entitled to receive a total of \$1,200.00 for overholding that period (\$600.00 for August 2019 and \$600.00 for September 2019)

In addition, since the tenants remained in the rental unit from October 1, 2019 until the date of the hearing on October 8, 2019, I find that the landlords are entitled to overholding rent in the amount of \$154.80 (ten days at the per diem rate of \$19.35) for October 2019.

Based on the undisputed testimony of the landlord and the tenancy agreement, I find that the landlord holds a security deposit of \$300.00 which may be deducted from the damages owed by the tenants pursuant to section 72(2)(b) of the *Act*.

In addition, since the landlord has been successful this matter, I award the landlords \$100.00 for recovery of the filing fee which may also be deducted from the security deposit pursuant to section 72(2)(b) of the *Act*.

Accordingly, I find that the landlords are entitled to a monetary order of \$1,754.80, calculated as follows.

<u>Item</u>	<u>Amount</u>
July 2019 rent unpaid	\$600.00
August 2019 overholding damages	\$600.00
September 2019 overholding damages	\$600.00
October 2019 overholding damages	\$154.80
Less security deposit	-\$300.00
Filing fee	\$100.00
Total	\$1,754.80

Conclusion

I find the landlord is entitled to an order of possession effective **seven days after service on the tenant**. This order must be served on the tenants. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I grant the landlord a monetary order in the amount of **\$1,754.80**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court to be 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 08, 2019

Residential Tenancy Branch