



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNRL OPR (landlord); CNR FFT (tenant)**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent (“Ten-Day Notice”) pursuant to sections 46 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

This hearing also dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten-Day Notice”) pursuant to section 46;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The hearing was conducted by teleconference. The tenant JU attended for both tenants (“the tenant”). Both parties provided affirmed testimony. The hearing process was explained, and both parties had an opportunity to ask questions. Each party had the opportunity to make submissions, present documentary evidence, call witnesses and cross examine the other party.

Each party acknowledged receipt of the other party's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find each party served the other in accordance with section 89 of the *Act*.

Preliminary Issue

At the outset, the landlord requested the following:

- Amendment of the application to include a request for an increase in the monetary award for outstanding rent for the month of October 2019 in the amount of \$1,486.25 for a total monetary award for outstanding rent requested of \$2,972.50; and
- Amendment to the application to authorize the landlord to apply the security deposit of \$725.00 to the monetary award.

The landlord submitted a copy of the Ten-Day Notice to End Tenancy for Nonpayment of Rent ("the Ten-Day Notice") dated September 2, 2019 which included a claim for nonpayment of rent up to and including that date in the amount of \$1,486.25; the landlord provided affirmed testimony and proof of service of the Ten-Day Notice on the tenant on September 2, 2019 by posting to the tenant's door. The tenant acknowledged service.

The landlord also provided uncontracted affirmed testimony that the tenant had not paid any rent since that time and rent for the month of October 2019 had subsequently accrued. During the hearing, the tenant agreed that the tenant had not paid rent for the months of September and October 2019.

The landlord submitted testimony that the tenant paid a security deposit of \$725.00 at the beginning of the tenancy which the landlord holds. During the hearing, the tenant provided authorization to the landlord to apply the security deposit to outstanding rent.

Rule 4 of the *Rules of Procedure* allows for the amendment of an application at the hearing in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served.

In consideration of the evidence filed, the testimony of the landlord, and the consent of the tenant, further to Rule 4, I accordingly allow the landlord to amend the application as sought.

The landlord clarified the landlord's claim as follows:

ITEM	AMOUNT
Rent	\$2,972.50
Reimbursement of the filing fee	\$100.00
(Less security deposit)	(\$725.00)
Total Monetary Award Requested	\$2,347.50

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent ("Ten-Day Notice ") pursuant to sections 46 and 55;
- Authorization to apply the security deposit to the monetary order for unpaid rent pursuant to section 72;
- Authorization to recover the filing fee for this application pursuant to section 72.

Is the tenant entitled to the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten-Day Notice") pursuant to section 46;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The parties agreed that they entered into a signed residential tenancy agreement commencing May 1, 2018. Rent is currently \$1,486.25 a month payable on the first of the month. The landlord submitted a copy of the agreement signed by both parties.

The parties testified the tenant paid a security deposit at the start of the tenancy, of \$725.00 which is held by the landlord. During the hearing, the tenant provided authorization to the landlord to retain the deposit and offset the monetary award for outstanding rent.

The landlord issued the Ten-Day Notice which the landlord testified the landlord served by posting to the tenant's door on September 2, 2019 thereby affecting service under section 90 on September 5, 2019 claiming unpaid rent of \$1,486.25. The landlord filed a witnessed Proof of Service Notice to End Tenancy form.

The tenant acknowledged service as testified by the landlord.

The landlord submitted a copy of the Ten-Day Notice with an effective vacancy date of September 13, 2019 (corrected to September 15, 2019) as evidence. The Notice required the tenant to pay the rent and utilities to the landlord or file an Application for Dispute Resolution within five days.

The parties agreed that the tenant did not pay the rent owing within five days and that the tenant filed an application for dispute resolution within five days. The tenant testified he understood that he had ten days to pay outstanding rent and offered to the landlord to pay the amount owing outside the five-day period. The landlord refused to accept the rent unless the tenant promised to vacate the unit at the end of September 2019.

Although the tenant acknowledged he had not paid rent for the month of September 2019 within the five-day period, the tenant submitted he should not have to pay as he proffered the money to the landlord, albeit outside the five-day period.

The parties agreed the tenant did not pay rent for the months of September and October 2019 and the tenant continues to reside in the rental unit.

The landlord provided testimony that rent is owing in the amount of \$2,972.50 and requested a monetary award in this amount.

The landlord requested a monetary award for reimbursement of the filing fee of \$100.00 and authorization to apply the security deposit to the monetary award for a total award requested of **\$2,347.50**

The landlord requested an order of possession effective two days after service.

A summary of the landlord's claim follows:

ITEM	AMOUNT
Rent outstanding	\$2,972.50
Reimbursement of the filing fee	\$100.00
(Less security deposit)	(\$725.00)
Total Monetary Award Requested	\$2,347.50

Analysis

I have reviewed all documentary evidence and testimony.

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*.

I find the tenant was served with the Ten-Day Notice on September 5, 2019 in accordance with sections 88 and 90 of the *Act*. I find the tenant acknowledged service.

I find the tenant did not pay the overdue rent within the five-day period following service, as acknowledged by the tenant. I find the tenant filed an application to dispute the Notice on September 10, 2019 within the five-day period following service.

The tenant acknowledged he did not pay rent for the months of September and October 2019. I find the Notice is not cancelled because the tenant claimed he offered to pay the outstanding rent in full outside the five-day period. Both parties agreed the tenant did not pay the balance owing within five-days following service.

I find that the tenant has failed to meet the burden of proof on a balance of probabilities that the circumstances warrant the cancelling of the Notice. I therefore dismiss the tenant's application to cancel the Notice.

As the Notice has been cancelled, pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice of September 15, 2019 requiring the tenant to vacate the rental unit by that date.

As the tenant continues to occupy the unit, I find the landlord is entitled to an order of

possession under section 46, effective two days after service.

Based on the uncontradicted evidence of the landlord and the acknowledgement of the tenant that the tenant has not paid rent for the months of September and October 2019, I find the landlord is entitled to a monetary award pursuant to section 67 in the amount of \$2,972.50 for unpaid rent for these months.

As the landlord has been successful in the landlord's application, I award the landlord reimbursement of the \$100.00 filing fee.

Further to the offsetting provisions of section 72, the landlord is entitled to apply the security deposit of \$725.00 to the monetary award.

A summary of my monetary finding follows:

ITEM	AMOUNT
Rent	\$2,972.50
Reimbursement of the filing fee	\$100.00
(Less security deposit)	(\$725.00)
Total Monetary Order	\$2,347.50

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Conclusion

I grant a monetary order to the landlord in the amount of **\$2,347.50**

This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) to be enforced as an order of that Court.

I also grant the landlord an order of possession effective two days after service on the tenant.

This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia 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 22, 2019

Residential Tenancy Branch