



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNRL OPR

Introduction

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

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

The tenant did not attend this hearing, which lasted approximately 10 minutes. The landlord attended and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that they had served the tenant with their application and evidence in person on August 30, 2019. Based on the testimony of the landlord I find that the tenant was served with the materials on that date in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed additional rent has come due and the total arrears as of the date of the hearing is \$5,000.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as the total amount owing changing when subsequent rent becomes due is reasonably foreseeable, I amend the landlord's Application to increase the landlord's monetary claim to \$5,000.00.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?
Is the landlord entitled to monetary compensation as claimed?
Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The monthly rent for this periodic tenancy is \$1,250.00 payable on the first of each month. A security deposit of \$625.00 was collected at the outset of the tenancy and is still held by the landlord. The tenant failed to pay rent for July, 2019 and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") on July 29, 2019. The landlord testified that the arrears as of the date of the 10 Day Notice was \$2,500.00 the amount indicated and the tenant did not make any payments against the arrear nor did they file an application for dispute resolution. The landlord testified that since the 10 Day Notice was issued subsequent rent has come due and the total arrears as of the date of the hearing is \$5,000.00.

Analysis

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,250.00. I accept the evidence before me that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenant dispute the 10 Day Notice within that 5 day period. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, August 8, 2019. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*. As the effective date has passed I issue an Order of Possession enforceable 2 days after service.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$5,000.00. I issue a monetary award for unpaid rent of \$5,000.00 as at October 24, 2019, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$625.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I grant an Order of Possession to the landlords effective **2 days after service on the tenants**. 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 monetary order in the landlord's favour in the amount of \$4,475.00, which allows the landlord to recover the unpaid rent and filing fee for their application and retain the security deposit for this tenancy.

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 24, 2019

Residential Tenancy Branch