



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, MNDCL-S, FFL

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 and for other money owed pursuant to section 67;
- authorization to 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 from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:41 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agent (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord gave undisputed sworn testimony that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted on the tenant's door on July 30, 2019. On this basis and in accordance with sections 88 and 90 of the *Act*, I find that this Notice was deemed served on August 2, 2019, the third day after its posting on the tenant's door. The landlord provided sworn testimony supported by written evidence in the form of a Canada Post Customer Receipt that a copy of the dispute resolution hearing package and the landlord's written evidence was sent to the tenant by registered mail on August 30, 2019. The landlord testified that Canada Post's Online

Tracking System revealed that the tenant picked up this material on September 11, 2019. On this basis, I find that the tenant was deemed served with this material in accordance with sections 88, 89 and 90 of the *Act* on September 5, 2019, the fifth day after its registered mailing.

At the hearing, I asked the landlord to clarify the evidence provided to the Residential Tenancy Branch, as very little evidence to support this application had been properly entered into the Branch's Online Service Portal. The landlord gave sworn testimony that this information had been entered into the Service Portal and that the tenant had been provided with this information. As I needed to review a copy of the 10 Day Notice in order to properly consider the landlord's application, I ordered the landlord to deposit another copy of the 10 Day Notice and proof of service documents on the Branch's Online Service Portal. While the hearing was still ongoing, the landlord placed these documents on the Service Portal as I had directed.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord gave undisputed sworn testimony that this tenancy began as a one-year fixed term tenancy on January 1, 2015. At the expiration of the first term, the tenancy continued as a month-to-month tenancy. Monthly rent throughout this tenancy has been set at \$980.00, payable in advance by the first of each month. The landlord continues to hold the tenant's \$490.00 security deposit, paid when this tenancy began.

The landlord's 10 Day Notice entered into written evidence identified \$17,518.00 as owing on July 1, 2019. The landlord gave sworn testimony that the tenant has not paid anything further to the landlord since the 10 Day Notice was issued. As such, the landlord noted that an additional \$980.00 in rent was owing for each of the months of August, September and October 2019. The landlord's application for a monetary award of \$20,458.00 included the request for the \$17,518.00 owing as of July 1, 2019, plus the subsequent three months.

Analysis

Section 26(1) of the *Act* establishes that “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.”

Section 46(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent “by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.” Section 46 (4) (b) of the *Act* provides that upon receipt of a 10 Day Notice to end tenancy the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file an application for dispute resolution within the five days of service granted under section 46 (4) of the *Act*. 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, being August 12, 2019, that is 10 days after the deemed service day.

Section 46(2) of the *Act* requires that “a notice under this section must comply with section 52 [*form and content of notice to end tenancy*]. I am satisfied that the landlord's 10 Day Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Based on the landlord's undisputed sworn testimony and the 10 Day Notice, I find that the landlord is entitled to a monetary award of \$17,518.00, the amount identified as

owing as of July 1, 2019. Since monthly rent for August 2019 became due before the 10 Day Notice was deemed served, I also allow the landlord a monetary award of \$980.00 in unpaid rent that became owing as of August 1, 2019, which the landlord testified has never been paid. In addition, and in accordance with section 57 of the *Act*, I find that the tenant has overheld this tenancy beyond the corrected effective date of August 13, 2019. For this reason, I find that the landlord is entitled to a monetary award of an additional \$980.00 for each of September and October 2019, as a result of losses incurred because the tenant did not vacate the rental unit before September 1, and remains in possession of this rental unit.

I allow the landlord to retain the tenant's \$490.00 security deposit in partial satisfaction of the monetary award issued in this decision. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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 under the following terms which enables the landlord to recover unpaid rent and other money owed, and the filing fee for this application, and to retain the security deposit for this tenancy:

Item	Amount
Unpaid Rent Owing as of July 1, 2019	\$17,518.00
Unpaid Rent Owing for August 2019	980.00
Overholding September 2019	980.00
Overholding October 2019	980.00
Less Security Deposit	-490.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$20,068.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 25, 2019

Residential Tenancy Branch