



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

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;
- 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 11:15 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. 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 supported by late written evidence that they handed the tenant the 10 Day Notice to End Tenancy (the 10 Day Notice) by the landlord on August 1, 2019. Based on this undisputed evidence, I find that the tenant was served with this Notice in accordance with section 88 of the *Act* as declared by the landlord. The landlord also testified that they handed the tenant a copy of the landlord's dispute resolution hearing package on September 4, 2019. On this basis, I find that the tenant was served with this package in accordance with section 89 of the *Act*.

Although the landlord submitted some written evidence to support this application, this evidence was entered on the Residential Tenancy Branch's online Service Portal within three days of this hearing, and not the fourteen days normally required. In the tenant's absence, I have taken into consideration the landlord's 10 Day Notice, as it was necessary to have a copy of this document in order to consider the landlord's application. I have not considered the remainder of the landlord's written evidence, as it was submitted well after the deadline for providing that evidence to the RTB and the Respondent.

At the hearing, the landlord reduced the amount of the requested monetary award from the \$3,201.00 identified in their application to \$2,801.00, the amount that the landlord maintained remained owing. The landlord testified that this amount reflected two payments of \$400.00, made on August 1, 2019, and October 1, 2019. The landlord said that these were the only payments made by the tenant following the issuance of the 10 Day Notice. The amount of the landlord's requested monetary award is reduced to \$2,801.00, plus the recovery of the landlord's \$100.00 filing fee.

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 sworn testimony that this tenancy began in 2011. According to the terms of the written month-to-month tenancy agreement between the parties, the landlord said that monthly rent is set at \$800.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$400.00 security deposit paid when this tenancy began.

The landlord gave undisputed sworn testimony that the \$1,600.00 amount identified as owing by the tenant on the 10 Day Notice on July 1, 2019, was actually intended to have included \$800.00 that was owing as of July 1, 2019, and the \$800.00 that became owing at the end of the day on August 1, 2019 for the tenant's August rent. The landlord said that the only payments received from the tenant since July 1, 2019, have been the two payments of \$400.00 received on August 1 and October 1, 2019. The

landlord testified that they made it clear to the tenant when they received these payments that rent was still owing and that the landlord intended to proceed with obtaining a decision from the Residential Tenancy Branch with respect to this tenancy after receiving the October 1, 2019 payment.

Although the landlord said that \$401.00 in unpaid rent remained owing from the period prior to July 1, 2019, the landlord provided no explanation as to why this amount was not also identified in the 10 Day Notice issued on August 1, 2019.

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 effective date of the 10 Day Notice, August 11, 2019.

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. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant contravened the *Act*, and that the landlord has suffered losses in unpaid rent. 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 written evidence in the 10 Day Notice, I allow the landlord a monetary award of \$800.00 for each of the four months from July 1, 2019 until October 31, 2019, less the two payments of \$400.00 provided by the tenant to the landlord on August 1, 2019 and October 1, 2019. Since the landlord only identified \$800.00 as owing on July 1, 2019, I do not award the landlord any further monetary award for unpaid rent that the landlord maintained was owing prior to July 1, 2019.

I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period. 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 allows the landlord to recover unpaid rent and their filing fee, and to retain the security deposit for this tenancy:

Item	Amount
Unpaid Rent Owing from July 1, 2019 to October 31, 2019 (\$800.00 x 4 months =	\$3,200.00

\$3,200.00)	
Less Two Payments of \$400.00 each made on August 1, 2019 and October 1, 2019 (\$400.00 x 2 months = \$800.00)	-800.00
Less Security Deposit	-400.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$2,100.00

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 28, 2019

Residential Tenancy Branch