



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPRM-DR FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act"), which was adjourned from a direct request to a participatory hearing, for:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$600 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, although I left the teleconference hearing connection open until 9:42 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed 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. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that he sent the tenant the notice of reconvened hearing, a copy of the interim decision from the direct request and some support evidence on October 12, 2019 by registered mail. He provided the Canada Post tracking number (reproduced on the cover of this decision) in support of this. He testified that he sent the tenant further evidence by registered mail on October 24, 2019. He provided a Canada Post tracking number (reproduced on the cover of this decision) as well.

I find that the tenant has been served with the required documents in accordance with sections 88, 89, and 90 of the Act.

Preliminary Issue – Amendment of Claim

At the hearing the landlord sought to further amend his application to include a claim for October 2019 rent which he testified remains outstanding.

Section 4.2 of the Rules states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case the landlord is seeking compensation for unpaid rent that has increased since he first applied for dispute resolution, I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the Act, I order that the landlord's application be amended to include a claim for October 2019 rent.

Issue(s) to be Decided

Is the landlord entitled to:

- an order of possession for non-payment of rent;
- a monetary order for unpaid rent in the amount of \$1,800; and
- authorization to recover the filing fee for this application from the tenants?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below.

The parties entered into a written tenancy agreement starting September 1, 2017. The agreement listed monthly rent as \$1,150 payable on the first of the month. The landlord testified that it is currently \$1,200. The tenant paid the landlord a security deposit of \$575 which the landlord currently retains.

The landlord testified that:

- he served the tenant with a 10 Day Notice to End Tenancy (the "**Notice**") with an effective date of September 14, 2019 on September 4, 2019 by posting it on the door of the rental unit as the tenant failed to pay the entirety of September 2019 rent (\$1,200) when it was due (September 1, 2019);
- the tenant made a \$600 partial payment of rent on September 16, 2019;
- the tenant did not vacate the rental unit on the effective date of the Notice;
- the tenant did not pay October 2019 rent; and
- he is not certain as to the date the tenant vacated the rental unit, but that the tenant's girlfriend (who also lived in the rental unit) did not vacate the rental unit until late

October 2019 (he is unsure of the exact date but believes that it was around October 23, 2019).

Analysis

I have reviewed all documentary evidence and find that in accordance with section 88 and 90 of the Act the tenant is deemed served with the Notice on September 7, 2019, three days after its posting.

I accept the landlord's uncontroverted evidence in its entirety.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,200. Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement. I find that the tenant or a person he allowed to be present in the rental unit did not vacate the rental unit until late October 2019. I accept the landlord's evidence that the tenant only paid \$600 in rent in September 2019 and no rent in October 2019.

I find that the tenant is in rental arrears of \$1,800.

1. Order of Possession

I accept the landlord's undisputed evidence and find that the tenant did not pay the rent owed in full within the five days after being served with the Notice granted under section 46 (4) of the Act and did not apply to dispute the Notice within that five-day period.

Based on the foregoing, 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 Notice, September 17, 2019.

2. Monetary Order

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Accordingly, I find that the landlord is entitled to a monetary Order of \$1,800 for rental arrears owed by October 1, 2019 as claimed by the landlord.

I find that the landlord may retain the security deposit (\$575) in partial satisfaction of the rental arrears.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100 filing fee paid for this application.

In summary, the landlord is entitled to a monetary order as follows:

Rental arrears	\$1,800
Filing fee	\$100
Deposit credit	\$575
Total	\$1,325

Conclusion

Pursuant to section 55 of the Act, 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 in, and enforced as an order of, the Supreme Court of British Columbia.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the rental arrears owed by the tenant.

Pursuant to sections 67 and 72(1) of the Act, I find that the landlord is entitled to a monetary order in the amount of \$1,325 for the recovery of the filing fee for this application. Should the tenants fail to comply with this order, this order may be filed in, and enforced as an order of, the Small Claims Division of the Provincial Court.

The landlord is provided with this order in the above terms and must serve the tenant with this order as soon as possible.

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: November 08, 2019

Residential Tenancy Branch