



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL OPRM-DR CNC CNR FFT LRE

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for unpaid rent or utilities under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

While the landlord attended the hearing by way of conference call, the tenant did not. I waited until 9:40a.m. to enable the tenant to participate in this scheduled hearing for 9:30 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 that the landlord and I were the only ones who had called into this teleconference.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the tenant did not attend this hearing, their entire application is dismissed without leave to reapply.

The landlord gave sworn testimony that he had served the tenant on September 11, 2019 copies of the Application for Dispute Resolution hearing package ('Application') and evidence by way of posting the documents on the tenant's door. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenant deemed served with copies of the landlord's application and evidence on September 13, 2019, 3 days after posting. The landlord confirmed receipt of the tenant's Application and evidence. Accordingly, I find the landlord duly served with the tenant's Application and evidence in accordance with sections 88 and 89 of the *Act*.

The landlord testified that he had served the tenant a 10 Day Notice for Unpaid Rent as well as a 1 Month Notice for cause on September 4, 2019 by posting both notices on the tenant's door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant deemed served with both notices on September 7, 2019, 3 days after posting.

Although the landlords applied for a monetary Order of \$559.00 in their initial claim, since they applied another \$990.20 in rent has become owing that was not included in their application. I have accepted the landlord's request to amend their original application from \$559.00 to \$1,549.20 to reflect this additional unpaid rent that became owing by the time this hearing was convened.

Issue(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 under the tenancy agreement, regulation, or *Act*?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord gave undisputed testimony regarding the following facts. This month-to-month tenancy began on April 4, 2018, with monthly rent set at \$850.00, payable on the first of each month. The landlord testified that as of November 1, 2019, a rent increase came into effect, although the landlord had not submitted a copy of the notice of rent increase that was served on the tenant. The landlord collected, and still holds, a security deposit of \$425.00. The tenant continues to reside in the rental unit.

The landlord issued the tenant a 10 Day Notice for unpaid rent on September 4, 2019, indicating an effective move-out date of September 18, 2019. A copy of the 10 Day Notice was included in the landlord's evidence. The landlord also served the tenant 19th a 1 Month Notice for Cause on the same date by posting the notice on the tenant's door. The landlord issued the 1 Month Notice for repeated late rent payments.

The landlord is seeking an Order of Possession, as well as a Monetary Order for unpaid rent as outlined in the table below and in the landlord's Application:

Item	Amount
Unpaid Rent for September 2019	\$559.00
Unpaid Rent for October 2019	140.20
Unpaid Rent for November 2019	850.00
Total Monetary Order Requested	\$1,549.20

Analysis

Section 55(1) of the *Act* reads as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the 10 Day Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenant's entire application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 10 Day Notice, September 18, 2019. 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.

Although the landlord references a rent increase for this tenancy, I find that the landlord has not provided sufficient evidence to support the service of the notice of rent increase to the tenant. Accordingly, I will consider the monthly rent at the original amount of \$850.00. The landlord provided undisputed evidence that the tenant failed to pay the outstanding rent in the amount of \$1,549.20. Therefore, I find that the landlord is entitled to a monetary order in that amount.

I find that the landlord is entitled to recovery the \$100.00 filing fee from the tenant.

The landlord continues to hold the tenant's security deposit in the amount of \$425.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Conclusion

I dismiss the tenant's entire application without leave to reapply.

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenants**. Should the tenant 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 \$2,675.00 monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent and utilities and the filing fee, and also allows the landlord to retain the tenants' security deposit:

Item	Amount
Unpaid Rent for September 2019	\$559.00
Unpaid Rent for October 2019	140.20
Unpaid Rent for November 2019	850.00
Filing Fee	100.00
Less Security Deposit	-425.00
Total Monetary Order	\$1,224.20

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: November 22, 2019

Residential Tenancy Branch