



Dispute Resolution Services

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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* ("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 the tenant's security deposit, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his brother had permission to assist him as an English language translator at this hearing, but his assistance was not required by the landlord. This hearing lasted approximately 20 minutes.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application. The tenant confirmed that he did not submit any evidence for this hearing.

The tenant confirmed personal receipt of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 3, 2019 ("10 Day Notice"), on the same date. The effective move-out date on the notice is November 13, 2019. In accordance with section 88 of the *Act*, I find that the tenant was personally served with the landlord's 10 Day Notice on November 3, 2019. The tenant confirmed that he did not file an application to dispute the landlord's 10 Day Notice.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the tenant's security deposit?

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

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. Monthly rent in the amount of \$1,200.00 is payable on the first day of each month. A security deposit of \$500.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord said that this tenancy began approximately 8 to 9 years ago, while the tenant said that it was 5 to 6 years ago.

The landlord seeks an order of possession based on the 10 Day Notice. The landlord seeks a monetary order of \$2,400.00 for unpaid rent, to retain the tenant's security deposit of \$500.00 against this rent, plus the \$100.00 application filing fee.

Both parties agreed that the landlord issued the 10 Day Notice for unpaid rent of \$1,200.00 due on November 1, 2019. Both parties agreed that the tenant failed to pay rent of \$1,200.00 for November 2019 and \$1,200.00 for December 2019, totaling \$2,400.00.

The tenant said that he got into a motor vehicle accident, he was unable to work, and he did not have any money for rent. The tenant claimed that he was waiting for payment from his insurance company for the accident, before he could pay rent to the landlord.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant agreed with what the landlord said. The tenant failed to pay the full rent due on November 1, 2019, within five days of receiving the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on November 13, 2019, the effective date on the 10 Day Notice.

In this case, this required the tenant and anyone on the premises to vacate the premises by November 13, 2019. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Section 26 of the *Act* requires the tenant to pay monthly rent to the landlord on the date indicated in the tenancy agreement, which in this case, is on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate a landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$2,400.00 from November to December 2019. Accordingly, I find that the landlord is entitled to rental arrears of \$2,400.00 from the tenant.

The landlord continues to hold the tenant's security deposit of \$500.00. Over the period of this tenancy, no interest is payable on the security deposit. The landlord applied to retain the security deposit and in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$500.00 in partial satisfaction of the monetary award.

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. 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 order the landlord to retain the tenant's entire security deposit of \$500.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$2,000.00 against the tenant. 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: December 20, 2019

Residential Tenancy Branch