



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* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 16 minutes. 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.

Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. A decision is made on the basis of the landlord's paper application only, not any participation by the tenant. An "interim decision," dated November 29, 2019, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

By way of the interim decision, the landlord was required to serve the interim decision and notice of reconvened hearing to the tenant. The landlord stated that the tenant was served with the above documents on December 3, 2019, by way of registered mail to the rental unit where the tenant is residing. The landlord provided a Canada Post receipt and tracking number with this application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the interim decision and

notice of reconvened hearing on December 8, 2019, five days after its registered mailing.

The landlord claimed that the tenant was served with the landlord's original application for dispute resolution by direct request on November 28, 2019, by way of registered mail to the rental unit where the tenant is residing. The landlord provided a Canada Post receipt and tracking number with this application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's original application on December 3, 2019, five days after its registered mailing.

The landlord stated that he personally served the tenant with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 2, 2019, ("10 Day Notice") on the same date. 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 2, 2019.

Preliminary Issue – Amendment of Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the landlord's monetary claim to include January 2020 rent of \$1,450.00. I find that the tenant is aware that rent is due as per her tenancy agreement. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required her to vacate earlier, for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay her full rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that she did not attend this hearing.

Issues 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 recover the filing fee for this application?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on September 1, 2019. Monthly rent in the amount of \$1,450.00 is payable on the first day of each month. A security deposit of \$725.00 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 issued the 10 Day Notice, which has an effective move-out date of November 13, 2019, indicating that rent in the amount of \$1,450.00 was due on November 1, 2019. The landlord provided a copy of the notice. The landlord explained that rent of \$1,450.00 for November 2019, December 2019, and January 2020 was due for each month. The landlord testified that the tenant made partial rent payments of \$700.00 on November 13, 2019 and \$400.00 on December 11, 2019, leaving unpaid rent balances of \$750.00 for November 2019 and \$1,050.00 for December 2019. The landlord claimed that the tenant did not make any rent payment for January 2020, leaving a balance of \$1,450.00.

The landlord seeks an order of possession based on the 10 Day Notice, a monetary order of \$3,250.00 for unpaid rent for November 2019, December 2019 and January 2020, and recovery of the \$100.00 filing fee.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on November 1, 2019, within five days of receiving the 10 Day Notice. Even though the tenant made a partial payment towards the November 2019 rent, the tenant did not pay the full rent owed within the five-day period. 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 these 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*, as the 10 Day Notice complies with section 52 of the *Act*.

As per section 26 of the *Act*, the tenant is required to pay rent 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 (“*Regulation*”) or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$750.00 for November 2019, \$1,050.00 for December 2019, and \$1,450.00 for January 2020. Although this hearing occurred on January 6, 2019, I find that the rent was due on January 1, 2020, and that the landlord may have to enforce the order of possession, potentially repair the rental unit for damages, and advertise to re-rent the unit to a new tenant. Therefore, I find that the landlord is entitled to \$3,250.00 in rental arrears from the tenant.

The landlord continues to hold the tenant’s security deposit of \$725.00. Although the landlord did not apply to retain the deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant’s entire security deposit, of \$725.00, in partial satisfaction of the monetary award. No interest is payable over the period of this tenancy.

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 days after service of this Order** 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 \$725.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord’s favour in the amount of \$2,625.00 against the tenant, for the balance due. 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: January 06, 2020