



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR MNRL-S FFL
For the tenant: CNR OLC PSF

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties, seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2019 (10 Day Notice, for a monetary order for unpaid rent or utilities, for authorization to keep all or part of the tenant's security deposit, and to recover the cost of the filing fee. The tenant applied to cancel the 10 Day Notice, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for an order directing the landlord to provide services or facilities agreed upon but not provided, and to recover the cost of the filing fee.

The landlord and the landlord agent SA (agent) attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

As the tenant did not attend the hearing, service of the landlord's application on the tenant was considered. The agent testified that the tenant was served on January 8, 2020, with the Notice of Dispute Resolution Proceeding document dated January 7, 2020 (Notice of Hearing), application and documentary evidence. A registered mail tracking number was submitted in evidence, which has been included on the cover page of this decision for ease of reference. According to the Canada Post registered mail

tracking website, the tenant has not picked up the registered mail package as of the date of the hearing. Section 90 of the Act states that documents sent by registered mail are deemed served five days after they are mailed. Therefore, I find the tenant was deemed served as of January 13, 2020.

In addition, the tenant was provided with their own Notice of Hearing dated December 6, 2019, which includes the date and time of the hearing scheduled for this date, January 28, 2020 at 9:30 a.m. Pacific Time. Based on the above, as the tenant failed to attend the hearing to present the merits of their application, I dismiss the tenants' application without leave to reapply.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

As both parties included their email addresses the landlord was advised that the decision and any orders would be sent by email to the landlord for service on the tenant. The decision will be emailed to the tenant.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence and reviewed during the hearing. The fixed-term tenancy began on December 1, 2018 and reverted to a month to month tenancy after November 1, 2019. Monthly rent of \$1,250.00 is due on the first day of each month. The tenant paid a security deposit of \$625.00 at the start of the tenancy, which the landlord continues to hold.

A copy of the 10 Day Notice was submitted in evidence. The agent confirmed that the tenant was served with the 10 Day Notice by posting to the tenant's door on December 2, 2019. The tenant writes in their application that they received the 10 Day Notice on

December 2, 2019. The 10 Day Notice is dated December 2, 2019. The 10 Day Notice indicates that \$1,250.00 in rent was owed as of December 1, 2019. The agent testified that the tenant has failed to pay rent for December of \$1,250.00 and has also failed to pay rent for January 2020 of \$1,250.00. The landlord is seeking \$2,500.00 for unpaid rent and is seeking to offset the security deposit from the amount owed.

The landlord confirmed that the tenant continues to occupy the rental unit. The landlord seeks an order of possession.

Analysis

Based on the undisputed testimony of the agent and landlord, and the undisputed documentary evidence before me, and on the balance of probabilities, I find the following.

Firstly, as the tenant failed to attend the hearing, I find the 10 Day Notice was not disputed by the tenant. Furthermore, I accept the undisputed testimony of the agent and landlord that the tenant was served with the 10 Day Notice and failed to pay December 2019 and January 2020 rent for a total owing of \$2,500.00. I have reviewed the 10 Day Notice and find that it complies with section 52 of the Act and find that it is valid as a result. Given the above, I grant the landlord **\$2,500.00** in unpaid rent as claimed pursuant to section 67 of the Act.

Order of Possession – Pursuant to section 55 of the Act, once I dismissed the tenant's application to cancel the 10 Day Notice and I upheld the landlord's 10 Day Notice, I must grant the landlord an order of possession. I have also reviewed the 10 Day Notice and find that it complies with section 52 of the Act and find that it is valid as a result. Therefore, based on the above, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I find the tenancy ended on December 16, 2019, which was the effective vacancy date listed on the 10 Day Notice.

As the landlord's application had merit, I grant the landlord the recovery of their **\$100.00** filing fee pursuant to section 72 of the Act. Given the above, I find the landlord's total monetary claim established is **\$2,600.00**, which is comprised of \$2,500.00 in unpaid rent plus the filing fee. Pursuant to sections 38 and 67 of the Act, I authorize the landlord to retain the tenant's full security deposit of \$625.00 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order for the balance owing

by the tenant to the landlord in the amount of **\$1,975.00** pursuant to section 67 of the Act.

Conclusion

The tenant's application is dismissed, without leave to reapply, due to insufficient evidence.

The landlord's application is fully successful. The landlord has been granted an order of possession effective two (2) days after service on the tenant. The tenant must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The tenancy ended December 16, 2019.

The landlord's total monetary claim is \$2,600.00, which is comprised of \$2,500.00 in unpaid rent plus the filing fee. The landlord has been authorized to retain the tenant's full security deposit of \$625.00 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order for the balance owing by the tenant to the landlord in the amount of \$1,975.00 pursuant to section 67 of the Act.

This decision will be emailed to the parties as noted above. The order of possession and monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 28, 2020

Residential Tenancy Branch