



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

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

This application was originally heard by way of a Direct Request Proceeding and on December 18, 2019 an interim decision was issued adjourning the application to be reconvened at a participatory hearing.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 9:45 a.m. to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, present evidence and make submissions.

The landlord testified that on December 19, 2019, a copy of the Application for Dispute Resolution including the Notice of Hearing and Interim Decision was sent to the tenant by registered mail. The landlord provided a registered mail receipt and tracking number in support of service.

Based on the above evidence, I am satisfied that the tenant was served with the Application for Dispute Resolution, Notice of Hearing and Interim Decision pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

Preliminary Issue – Amendment to Landlord's Application

Paragraph 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenant had not yet vacated the rental unit and therefore asked to amend his claim to include outstanding rent payable up until the date of the hearing. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

Is the landlord entitled to a monetary award for unpaid rent and recovery of the filing fee?

Background and Evidence

The tenancy began on November 15, 2019 with a monthly rent of \$1800.00 payable on the 15th day of each month. The tenant paid a security deposit of \$900.00 at the start of the tenancy which the landlord continues to hold.

The landlord submitted a copy of a 10 Day Notice dated November 24, 2019. The 10 Day Notice indicates an outstanding rent amount of \$3200.00 which was due on November 15, 2019. The 10 Day Notice provides that the tenant had five days from the date of service to pay the outstanding rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective date of the Notice.

The landlord testified that on November 24, 2019 he served the tenant with the 10 Day Notice by posting a copy to the door of the rental premises. A witnessed proof of service of the 10 Day Notice was provided with the application as well as pictures of the notice posted to the rental unit door.

The landlord testified that the outstanding amount as per the 10 Day Notice should have been \$3600.00 for the two-month period of October 16, 2019 to November 15, 2019 and November 16, 2019 to December 15, 2019. The landlord testified that he mistakenly recorded only \$3200.00 on the 10 Day Notice. The landlord testified the

outstanding rent was not paid within 5 days and the tenant only paid an amount of \$900.00 on December 1, 2019.

The landlord's amended monetary claim is for outstanding rent in the amount of \$8100.00. The landlord testified that this includes unpaid rent as per below:

Item	Amount
Oct 16, 2019 to Nov 15, 2019	900.00
Nov 16, 2019 to Dec 15, 2019	1800.00
Dec 16, 2019 to Jan 15, 2020	1800.00
Jan 16, 2020 to Feb 15, 2020	1800.00
Feb 16, 2019 to Mar 15, 2019	1800.00
Total Monetary Order Sought	\$8100.00

Analysis

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice.

I am satisfied that the tenant was deemed served with the 10 Day Notice on November 27, 2019, three days after its posting, pursuant to sections 88 & 90 of the Act. The tenant would have had until December 2, 2019 to pay the entire outstanding amount as per the 10 Day Notice which she failed to do.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the landlord's uncontested evidence and claim for outstanding rent of \$8100.00. The landlord is entitled to recover the filing fee for a total award of \$8200.00.

The landlord continues to hold a security deposit of \$900.00. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$7300.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$7300.00. 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: February 21, 2020

Residential Tenancy Branch