



Dispute Resolution Services

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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* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The tenant acknowledged receipt of evidence submitted by the landlord and gave affirmed testimony. The tenant did not submit any documentation for this hearing.

The landlord entered written evidence and gave sworn testimony that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was sent by registered mail on December 27, 2019 and that the item was unclaimed. I am satisfied that the landlord served this Notice to the tenant in accordance with section 88 of the *Act*. In accordance with section 90 of the *Act*, the 10 Day Notice was deemed served to the tenant on January 2, 2020, the fifth day after its mailing.

Issues(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?

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

Background and Evidence

Both parties agree that the tenancy began on or about September 1, 2017. Rent in the amount of \$3200.00 is payable in advance on the first day of each month. The tenant paid a security deposit of \$1600.00 which the landlord still holds.

The landlord gave the following testimony. The tenant failed to pay rent in the month(s) of December 2019 and on December 27, 2019 the landlord served the tenant with a notice to end tenancy. The tenant further failed to pay rent in the month(s) of January to April 2020, inclusive. The landlord advised that as of today's hearing the amount of unpaid rent is 16,000.00. The landlord seeks to recover the amount of unpaid rent, the \$100.00 filing fee and an order of possession.

The tenant gave the following testimony. The tenant testified that the landlord purchased this unit one month after she moved in. The tenant testified that she was unhappy with the cleanliness and condition of the unit. The tenant testified that she believes she paid the rent for December 2019 and that there is only four months of unpaid rent due. The tenant testified that she feels that as a result of the condition of the unit, she was not required to pay the rent.

Analysis

The tenant failed to pay their rent in full within five days of being deemed to have received the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the corrected effective date of the notice. Although this matter was adjourned by an Adjudicator from the Direct Request Process to a participatory hearing, the tenant has not filed an application to dispute the notice or provided any disputing documentation for this hearing.

In this case, this required the tenant to vacate the premises by January 12, 2020. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord is granted an Order of Possession pursuant to Section 55(2)(a) of the *Act*, which must be served on the tenant(s). 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.

Based on the evidence provided by the landlord, I am satisfied that the tenant continues to owe the landlord unpaid rent. Although the landlord has not applied to retain the

security deposit, using the offsetting provision under Section 72 of the Act, I hereby apply the \$1600.00 security deposit against the amount of unpaid rent. The landlord is also granted the recovery of the filing fee of \$100.00.

Conclusion

Item	Amount
Unpaid rent for December 2019 to April 2020, inclusive.	16,000.00
Filing Fee	100.00
Less Deposit	-1600.00
Total Monetary Order	\$14,500.00

The landlord is granted an order of possession and a monetary order for \$14,500.00. The landlord may retain the security deposit.

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: April 24, 2020

Residential Tenancy Branch