



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, MNRL-S, FFL

Introduction

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

- an Order of Possession for tenant's notice to end tenancy, pursuant to section 45 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, 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's interpreter and the tenant's support person also attended.

Both parties agree that the tenant was served with the landlord's application for dispute resolution on June 5, 2020 via email. I find that the tenant was served in accordance with the March 30, 2020 Director's Order.

Preliminary Issue- Settlement

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of the landlord's claim for an Order of Possession for tenant's notice to end tenancy.

Both parties agreed to the following final and binding settlement of the landlord's claim for an Order of Possession for tenant's notice to end tenancy:

1. The tenant agrees to vacate the subject rental property by 1:00 p.m. on June 30, 2020.

These particulars comprise the full and final settlement of all aspects of the landlord's claim for an Order of Possession for tenant's notice to end tenancy. Both parties gave verbal affirmation at the hearing that they understood and agreed to the above terms as legal, final and binding.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

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

Both parties agreed that they had a previous hearing with the Residential Tenancy Branch on June 22, 2019. The previous file number is on the cover page of this decision.

Both parties agreed to the following facts. This tenancy began on January 1, 2020 and is currently ongoing. Monthly rent in the amount of \$3,300.00 is payable on the first day of each month. A security deposit of \$1,700.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the tenant paid \$1,500.00 towards May 2020's rent and that the landlord received \$500.00 from the government on behalf of the tenant for May 2020's rent. Both parties agree that the tenant owes the landlord \$1,300.00 for May 2020's rent.

Both parties agree that the tenant did not pay any money towards June 2020's rent and that the landlord received \$500.00 from the government on behalf of the tenant for June 2020's rent. Both parties agree that the tenant owes the landlord \$2,800.00 for June 2020's rent.

The parties were unable to agree on a re-payment plan, so a settlement was not reached. The tenant testified that she has no way of re-paying the landlord at this time as she lost her source of income due to COVID 19.

Analysis

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$3,300.00 on the first day of each month. Based on the testimony of the parties, I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlords \$4,100.00 in unpaid rent from May to June 2020.

As the landlord was successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$1,700.00.

Conclusion

To give effect to the settlement reached between the parties and as discussed with them during the hearing, I issue the attached Order of Possession to the landlord effective at **1:00 p.m. on June 30, 2020**, which should be served on the tenant. Should

the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
May rent	\$1,300.00
June rent	\$2,800.00
Filing Fee	\$100.00
Less security deposit	-\$1,700.00
TOTAL	\$2,500.00

The landlord is provided with this Order in the above terms and 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: June 30, 2020

Residential Tenancy Branch