



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACTIONOPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPU-DR-PP, OPUM-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;
- authorization to retain all or a portion of the tenants' pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the 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. The tenant did not submit any documentation for this hearing. Both parties gave affirmed testimony.

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 retain all or a portion of the tenants' deposits in partial satisfaction of the monetary award requested?

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

Background and Evidence

The landlord gave the following testimony. The tenancy began on or about August 29, 2016. Rent in the amount of \$1750.00 is payable in advance on the first day of each

month along with the utilities. The tenant failed to pay rent in the month(s) of September 2020 and on September 3, 2020 the landlord served the tenant with a notice to end tenancy. The tenant further failed to pay rent in the month(s) of October 2020. The tenant failed to pay the May 2020 utilities to which the landlord issued a 30-day demand letter to the tenant. The landlord testified that the tenant hasn't paid rent since March 2020.

The tenant gave the following testimony. The tenant testified that he agrees that there is unpaid rent and that the tenancy should end. The tenant testified that rent was paid for March to August and that he has video evidence to support that claim. The tenant testified that his rent was stolen and that the police are involved and that the matter will be "dealt with in the courts".

Analysis

The tenant failed to pay their rent in full within five days of being deemed to have received the 10 Day Notices. 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.

The tenant does not dispute that the rent hasn't paid in full but does dispute the amount. The tenant also agrees that the tenancy should end. The parties both agreed that the last day of the tenancy should be October 31, 2020. I find that the landlord is entitled to an Order of Possession reflecting that date. The landlord is granted an Order of Possession pursuant to Section 55 of the *Act*, which must be served on the tenant(s). If the tenants do not vacate the rental unit, the landlord may enforce this Order in the Supreme Court of British Columbia.

As mentioned above, the tenant agrees that there are rental arrears but is unsure of how much; the tenant provided three different calculations and totals. The landlord provided clear documentation that the tenant has not paid the rent for September or October, I am satisfied that the tenants continue to owe the landlord unpaid rent. However, in regard to the utility bill, the bill is for the month of May 2020 during which time a notice to end tenancy for unpaid rent or utilities could not be issued without providing a repayment plan. The repayment plan was issued on September 3, 2020 requiring the first payment for November 1, 2020. The landlord was premature in seeking to recover that amount as part of this hearing, accordingly; I dismiss the landlords request for the utility bill cost with leave to reapply. The landlord is entitled to

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

For absolute clarity and for the benefit of the parties, this decision dealt with the unpaid rent for September and October 2020; based on the notice issued by the landlord and the issues applied for by the landlord. Both parties mentioned unpaid rent from March to August; those items can be addressed outside of this hearing between the parties or in another hearing if necessary.

Conclusion

Item	Amount
Unpaid Rent September 2020	\$1750.00
Unpaid Rent October 2020	1750.00
Filing fee	100.00
Less Deposits	-1750.00
Total Monetary Order	\$1850.00

The landlord is granted an order of possession and a monetary order for \$1850.00.

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: October 22, 2020

Residential Tenancy Branch