



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-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 both parties gave affirmed testimony. The tenant did not submit any documentation for this hearing.

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 tenants?

Background and Evidence

The landlord gave the following testimony. The tenancy began on or about December 15, 2018. Rent in the amount of \$1890.00 is payable in advance on the first day of each month. The tenant paid a security deposit of \$925.00 at the outset of the tenancy which the landlord still holds. The tenant failed to pay rent in the month(s) of November and on November 16, 2020 the landlord served the tenant with a notice to end tenancy. The tenant further failed to pay rent in the month(s) of December and January. The

landlord advised that the tenant paid for November and December rent on December 14, 2020 but has not paid for January leaving an outstanding balance of \$1890.00. The landlord is seeking an order of possession and the recovery of the unpaid rent along with the \$100.00 filing fee for a total claim of \$1990.00.

The tenant gave the following testimony. The tenant testified that he has had significant health issues for the past year which has caused him issues in paying the rent on time. The tenant testified that he promises he will pay all outstanding rent if he's allowed to stay.

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.

In this case, this required the tenant to vacate the premises by November 29, 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 of the *Act*, which must be served on the tenant. 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 security deposit against the amount of unpaid rent. I also grant the landlord the recovery of the \$100.00 filing fee for this application for a total award of \$1990.00.

Conclusion

The landlord is granted an order of possession. The tenancy is terminated. The landlord has established a claim for \$1990.00. I order that the landlord retain the \$925.00 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$1065.00. This order may be filed in the Small Claims 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: January 15, 2021

Residential Tenancy Branch