



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, MNDCL-S, FFL

Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 13 minutes. The landlord's two agents, "landlord IG" and "landlord SM," 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 hearing began at 9:30 a.m. and ended at 9:43 a.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's two agents and I were the only people who called into this teleconference.

Landlord IG confirmed that he is the son of the landlord named in this application and that he had permission to speak on his behalf. He said that the landlord owns the rental unit. Landlord IG confirmed the spelling of his name, the landlord's name, and the tenant's name. He stated the rental unit address. He claimed that landlord SM had permission to represent him, and the landlord named in this application. Landlord IG confirmed that a copy of this decision could be emailed to landlord SM after this hearing. Landlord SM provided his email address for same.

At the outset of this hearing, I informed the landlord's two agents that they were not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. Both landlord agents affirmed that they would not record this hearing.

I explained the hearing process to the landlord's two agents. They had an opportunity to ask questions. They confirmed that they were ready to proceed with this hearing. They did not make any adjournment or accommodation requests.

Landlord SM stated that the tenant was served with the landlord's application for dispute resolution hearing package on August 20, 2021, by way of registered mail to the rental unit, and on August 21, 2021, in person to the tenant. The landlord provided a Canada Post receipt and landlord SM confirmed the tracking number verbally during this hearing. Landlord SM confirmed that he served the tenant personally and landlord IG confirmed that he witnessed that service. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was personally served with the landlord's application on August 21, 2021, and deemed served with the landlord's application on August 25, 2021, five days after its registered mailing.

Landlord SM stated that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 5, 2021 ("10 Day Notice") on the same date, by way of personally leaving a copy with the tenant's mother, who resides with the tenant. The landlord provided a signed, witnessed proof of service with this application. In accordance with section 88(e) of the *Act*, I find that the tenant was served with the landlord's 10 Day Notice, by way of leaving a copy with the tenant's mother, who is an adult apparently residing with the tenant.

Preliminary Issue – Amendment of Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to correct the spelling of the landlord's first name. Landlord IG confirmed the correct spelling during this hearing. Landlord IG consented to this amendment during this hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the landlord's monetary claim to include December 2021 rent of \$850.00. Landlord SM requested this amendment.

The landlord filed this application on August 5, 2021, prior to the December 2021 rent being due. I find that the tenant is aware that rent is due as per his tenancy agreement. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required him to vacate earlier, for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay his full rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that he did not attend this hearing.

Issues 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 the tenant's security deposit?

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

Background and Evidence

Landlord SM testified regarding the following facts. This tenancy began on March 1, 2021. Monthly rent in the amount of \$850.00 is payable on the first day of each month. A security deposit of \$400.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

Landlord SM stated the following facts. The 10 Day Notice, which has an effective move-out date of July 25, 2021, indicates that rent in the amount of \$1,700.00 was due on July 1, 2021. The landlord provided a copy of the notice. The above amount includes rent of \$850.00 for each month from June to July 2021, totalling \$1,700.00. Rent of \$850.00 is unpaid by the tenant, from June to December 2021, a period of 7 months, totalling \$5,950.00.

The landlord seeks an order of possession based on the 10 Day Notice, a monetary order of \$5,950.00 for unpaid rent from June to December 2021, and recovery of the \$100.00 filing fee.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on July 1, 2021, within five days of receiving the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice.

In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on July 25, 2021, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by July 25, 2021. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

As per section 26 of the *Act*, the tenant is required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$850.00 for each month from June to December 2021, totalling \$5,950.00. Although this hearing occurred on December 9, 2021, I find that the rent was due on December 1, 2021, so the tenant owes rent for the full month of December 2021. Therefore, I find that the landlord is entitled to \$5,950.00 total in rental arrears from the tenant.

The landlord continues to hold the tenant's security deposit of \$400.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's entire security deposit of \$400.00, in partial satisfaction of the monetary award. No interest is payable over the period of this tenancy.

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

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

I order the landlord to retain the tenant's entire security deposit of \$400.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$5,650.00 against the tenant. 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: December 09, 2021

Residential Tenancy Branch