



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR, 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 pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents with agent KO (the "landlord") primarily speaking.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the landlord requested to amend the amount of their monetary claim indicating that since the application was filed additional rent has come due and owing while some payments were received. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure as the amount of arrear changing with additional rent coming due over time and payments being made is reasonably foreseeable I amend the landlord's monetary claim by decreasing from \$3,862.00 to \$2,960.00.

Issue(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

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in November 2008. The current monthly rent is \$1,129.00 payable on the first of each month. It was previously \$1,113.00 until raised in accordance with the Act on January 1, 2022. A security deposit of \$408.00 was collected at the start of the tenancy and is still held by the landlord.

There was a rental arrear of \$3,959.00 as at November 1, 2021 and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent dated November 2, 2021. The landlord provided a detailed ledger of the tenancy showing amounts paid and owing. The tenant testified that they were served with the 10 Day Notice and had not filed an application to dispute the notice nor paid the full amount of the arrear.

The parties agree that the tenant has made some payments against the arrear which were accepted for “use and occupancy only” and did not serve to reinstate the tenancy. The landlord testified that as at the date of the hearing, February 25, 2022, the total arrear is \$2,960.00. The tenant was uncertain of the landlord’s calculation but did not provide an alternate figure.

Analysis

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,113.00 and subsequently \$1,129.00 pursuant to the signed tenancy agreement and the notices of rent increase. I accept the evidence before me that the tenant failed to pay the full rent and there was an arrear of \$3,959.00 as at November 2, 2021 giving rise to the issuance of a 10 Day Notice. I am satisfied with the landlord’s evidence including their cogent testimony and detailed ledger of amounts owing and received.

I accept the evidence of the parties that the tenant was served with the 10 Day Notice and has not filed an application to dispute the notice nor paid the full amount of the rent due within 5 days of receipt of the Notice. I accept the landlord's evidence that any subsequent payments were clearly indicated to the tenant to be for use and occupancy and did not reinstate the tenancy.

Therefore, pursuant to section 46(5) of the Act I find the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the 10 Day Notice and the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*. As the effective date of the Notice has passed I issue an Order effective 2 days after service on the tenant.

I accept the landlord's evidence that the total amount of arrears for this tenancy is \$2,960.00. I find the landlord's detailed calculations to be consistent and reasonable. I find the tenant's submission that they are uncertain of the calculations to be insufficient to find there are errors or omissions in reaching the figure submitted by the landlord. Accordingly, I issue a monetary award for unpaid rent owing of \$2,960.00 as at February 25, 2022, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$408.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service 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 issue a monetary order in the landlord's favour in the amount of \$2,652.00 which allows the landlord to recover unpaid rent and the filing fee for their application and retain the security deposit. 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: February 25, 2022

Residential Tenancy Branch