



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, 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; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:44 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was sent a copy of the dispute resolution hearing package ('Application') and evidence by way of registered mail on February 9, 2022, and the subsequent package on March 3, 2022 with the Notice of Hearing for the participatory hearing. The landlord provided tracking numbers for both packages. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenant deemed served with the Application and evidence five days after mailing. The tenant did not submit any written evidence for this hearing.

The landlord testified that the tenant was served the 10 Day Notice on January 5, 2022, by posting the notice on their door. In accordance with sections 88 and 90 of the *Act*, I

find the tenant deemed served with the 10 Day Notice on January 8, 2022, three days after its posting.

Although the landlord applied for a Monetary Order of \$2,031.96 in their initial claim, the landlord testified that the tenant has only made partial payments each month. Since the filing of the original direct request proceeding, another \$7,088.28 in rent has become owing that was not included in the original application. I have accepted the landlord's request to amend their original application to reflect the additional unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

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

Background and Evidence

This tenancy began on September 1, 2021 with monthly rent currently set at \$2,999.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$1,500.00, which the landlord still holds.

The landlord served the tenant with a 10 Day Notice for unpaid rent on January 5, 2022 as the tenant has only made partial payments of their rent. The landlord testified that since the 10 Day Notice was served, the tenant has failed to pay the outstanding rent in full, and has only made the following partial payments: \$938.37 on February 18, 2022 and \$970.35 on March 1, 2022.

The landlord testified that the tenant has changed the locks as well.

The landlord is seeking an Order of Possession as well as a Monetary Order for unpaid rent and recovery of the filing fee. The landlord testified that if they were granted a monetary order for unpaid rent, they would agree to deduct \$150.00 per month for the months of February 2022 through to April 2022.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the rent in full, within five days of being deemed to have received the 10 Day Notice. The tenant did not make an 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 failure of the tenant to take either of the above actions within five days led to the end of this tenancy on January 18, 2022, 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 January 18, 2022. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. As the tenant has not moved out, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

The landlord provided undisputed evidence that the tenant failed to pay the outstanding rent in the amount of \$9,120.24 for this tenancy. Therefore, I find that the landlord is entitled to a monetary order for this amount less \$150.00 per month for February through to April 2022 for a total monetary order of \$8,670.24.

The landlord continues to hold the tenant's security deposit of \$1,500.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

As the landlord was successful in their application, I find that the landlord is entitled to recover the filing fee for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two (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 \$7,270.24 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent, the filing fee for this application, and also allows the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Item	Amount
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Unpaid Rent	\$9,120.24
Less \$450.00 deduction agreed to by landlord	-450.00
Recovery of Filing Fee for this Application	100.00
Security Deposit	-1,500.00
Total Monetary Order	\$ 7,270.24

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: April 05, 2022

Residential Tenancy Branch