



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPR-DR, MNR-DR

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 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:40 a.m. in order to enable them to connect with 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.

The landlord entered written evidence and sworn testimony that she served the tenant the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by posting the notice on the tenants' door at 5:00 p.m. November 15, 2021. I am satisfied that the landlord served this Notice to the tenant in accordance with section 88 of the *Act*. In accordance with section 90 of the *Act*, the 10 Day Notice was deemed served to the tenant on November 18, 2021, the third day after its posting.

The landlord gave written evidence and sworn oral testimony that copies of the landlord's dispute resolution hearing package was personally served to the tenant on January 27, 2022 in the presence of a witness. In accordance with sections 89 and 90 of the *Act*, I am satisfied the tenant was duly served with the landlord's dispute resolution hearing packages on January 27, 2022.

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 tenant?

Background and Evidence

The tenancy began on or about August 1, 2019. Rent in the amount of \$1700.00 is payable in advance on the first day of each month. The tenant paid a security deposit of \$850.00 and a pet deposit of \$850.00 which the landlord still holds. The tenant failed to pay rent in the month(s) of November and on November 15, 2021 the landlord served the tenant with a notice to end tenancy. The landlord testified that the tenant made some small partial payments but never caught up and as of today's hearing the tenant owes the landlord \$7800.00 in unpaid rent.

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.

In this case, this required the tenants to vacate the premises by November 28, 2021. 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(s). If the tenants do 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 undisputed 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.

The landlord is also entitled to the recovery of the filing fee.

The landlord has provided sufficient evidence that they are entitled to an award of \$7900.00.

Conclusion

The landlord has established a claim for \$7900.00. I order that the landlord retain the \$1700.00 in deposits in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$6200.00. 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: April 04, 2022

Residential Tenancy Branch