



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S, OPR

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;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 retain all or a portion of the tenants' deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

The tenancy began on or about October 1, 2017. Rent in the amount of \$1385.85 is payable in advance on the first day of each month. The tenant paid a security deposit of \$625.00 which the landlord still holds. The tenant failed to pay rent in the month(s) of March 2022 to May 2022; inclusive, the landlord served the tenant with a notice to end tenancy on May 14, 2022. The landlord testified that the tenant did not make any payments until June, 22, 2022. The landlord testified that the tenant never caught up in full and was told the payments were for use and occupancy only and that the tenancy was not re-instated. The landlord testified that as of today's hearing the tenant still owes \$3802.90. The landlord testified that they want an order of possession and monetary order.

The tenant gave the following testimony. The tenant testified that he agrees to the amount outstanding. The tenant testified that he withheld rent in May because he was awaiting the outcome of another hearing with the landlord. The tenant testified that he could pay all the rent if given some time. The tenant confirmed that he did not make any payments within five days of receiving the notice nor did he file to dispute the notice. The tenant stated, "it is what it is".

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 tenants to vacate the premises by May 24, 2022. 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 evidence provided by the landlord, I am satisfied that the tenant continues to owe the landlord \$3802.90 in unpaid rent up until this date. The landlord asked if November's rent could be applied. I find that it would be premature to award that since the rent is not yet due however the landlord is entitled to pursue that if there are future losses in a separate application. 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.

Conclusion

The landlord is granted an order of possession.

The landlord has established a claim for \$3902.90. I order that the landlord retain the \$625.00 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$3277.90. 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: October 31, 2022

Residential Tenancy Branch