



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **OPR-DR, MNR-DR, FFL**

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for:

- an order of possession of the rental premises based upon the tenant's failure to pay rent;
- a monetary order for compensation against the tenant for failure to pay rent under the Act, Residential Tenancy Regulation or tenancy agreement, pursuant to section 67; and,
- an authorization to recover the filing fee for this application under section 72.

The landlord Ku.M. attended the hearing, assisted by her son, K.M. The tenant made no appearance during the hearing (which concluded after approximately 40 minutes). Those in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. The parties confirmed they understood the Rules of Procedure and section 95(3) of the Act.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Can the landlord recover a monetary award for unpaid rent?

Can the landlord recover the filing fee?

Background and Evidence

The landlord provided undisputed testimony that this tenancy began on September 15, 2022 when the tenant physically moved onto the property. Prior to this time, the landlord stated that the tenant began moving her possessions into the rental unit on or about August 15, 2022. The rent was \$1,500.00 per month. A security deposit of \$750.00 paid at the outset of the tenancy continues to be held by the landlord. The landlord stated that the tenant was served with a 10 Day Notice for Unpaid rent on December 6, 2022, by posting the Notice to the door of the rental unit. Additionally, the landlord stated that the tenant was served again on December 17, 2022 by hand-delivery of a copy of the Notice that had been posted on the door of the rental unit.

The landlord attested that the tenant had been served with a copy of the application for dispute resolution prior to the scheduled hearing by hand-delivery to the tenant.

The landlord stated that during the term of the tenant's occupation of the premises, the tenant has only made one partial payment in the amount of \$500 on October 14, 2022, toward her rent obligation.

The landlord testified that the tenant has continued to occupy the rental premises. The landlord seeks an order of possession as well as monetary damages for unpaid rent, as well as an award of the filing fee for initiation of this proceeding.

Analysis

Upon review of the Notice, I find the Notice has been completed in accordance with the requirements of section 52 of the Act. I further find, based on the landlord's uncontroverted testimony, that service of the Notice was made in accordance with the Act on the tenant on December 6, 2022 by posting on the door of the rental premises; and, again on December 17, 2022 by personal delivery to the tenant. I find the tenant was sufficiently served with the Notice of Dispute proceedings.

The tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. 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 tenant's failure to take either of these actions within five days has led to the end of the tenancy on the effective date of the notice.

In this case, this required the tenant to vacate the premises by December 16, 2022. As that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award.

The landlord explained that the tenant has only made one partial payment in the amount of \$500 toward September, 2022 rent; the remaining months to date the landlord has received no rent.

The tenant failed to attend the hearing, and no evidence was submitted by the tenant explaining why rent remained unpaid. I find that the landlord has suffered a loss under this tenancy and pursuant to section 67 of the *Act* I find that the landlord is entitled to receive a monetary award for unpaid rent of \$11,500.00, representing the balance of unpaid rent for September 2022 and rent for October 15, 2022 through April 15, 2023. The rent for May 15, 2023 was not yet due at the time of this hearing and thus cannot be awarded.

Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's \$750.00 security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in their application, they may recover the \$100.00 filing fee from the tenant.

Conclusion

I make a Monetary Order in the amount of \$10,850.00 as follows:

ITEM	AMOUNT
Unpaid rent for Sept 2022 & Oct 15, 2022 to Apr 14, 2023	11,500.00
Return of filing fee	100.00
Less Security deposit	(-750.00)
TOTAL =	\$10,850.00

The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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

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: May 23, 2023

Residential Tenancy Branch