



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

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; and
- a monetary order for unpaid rent pursuant to section 67;

The tenant did not attend this hearing, although I waited until 11:15 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. An agent of the landlord, K.G., (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 testified that the Landlord's Application for Dispute Resolution (the Application) and evidentiary package were sent to the tenant by way of registered mail on August 11, 2017. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the Application and evidentiary package on August 16, 2017, the fifth day after its registered mailing.

The landlord testified that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted to the door of the rental unit on July 12, 2017. I find that the 10 Day Notice, identifying \$4,539.00 in rent owing for this tenancy, was deemed served to the tenant on July 15, 2017, in accordance with sections 88 and 90 of the *Act*.

At the outset of the hearing the landlord testified that the tenant is still in the rental unit and has made a payment of \$600.00 towards the total amount owing on the 10 Day Notice and \$1,400.00 for the August 2017 monthly rent (\$700.00 paid on August 04, 2017 and \$700.00 paid on August 22, 2017). The landlord requested to amend his application for a monetary award from \$3,939.00 to \$3,964.00 to account for a \$25.00 fee due to the August 2017 rent being paid late. Section 7(d) of the *Residential Tenancy*

Regulations allows for a \$25.00 administrative fee for late payment of rent. I allowed this amendment to the landlord's monetary application as it is clear that the tenant would have known that the August 2017 monthly rent was paid late.

The landlord's amended application for a monetary award of \$3,964.00 is for the following items:

Item	Amount
Unpaid May 2017 Rent	\$1,139.00
Unpaid June 2017 Rent	1,400.00
Unpaid July 2017 Rent	1,400.00
Unpaid August 2017 late fee	25.00
Amended Requested Monetary Order	\$3,964.00

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?

Background and Evidence

The landlord gave written evidence that this tenancy began on July 03, 2008, with a monthly rent of \$1,200.00 due on the first day of the month. The tenancy agreement indicates by way of two initials that the monthly rent was increased from \$1,200.00 to \$1,400.00 on July 28, 2016, by mutual agreement of the landlord and the tenant. The landlord testified that he continues to retain a \$600.00 security deposit in trust.

A copy of the signed 10 Day Notice, dated July 12, 2017, with an effective date of July 22, 2017, was included in the landlord's evidence.

A copy of the landlord's tenant ledger showing the monthly rent owing and paid during this tenancy was also included in the landlord's evidence.

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Based on the landlord's undisputed evidence and testimony, I find the tenant failed to pay any rent within five days of receiving the 10 Day Notice and did not make 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 failure of the tenant to take either of these actions within five days led to the end of this tenancy on July 25, 2017, the corrected effective date on the 10 Day Notice. In this case, the tenant and anyone on the premises were required to vacate the premises by July 25, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

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. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Based on the landlord's undisputed written evidence and sworn testimony, I find the landlord is entitled to a monetary award of \$3,964.00 for unpaid rent and late fees owing for this tenancy for the period from May 2017 to August 2017.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** 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.

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and to retain the tenant's security deposit:

Item	Amount
Unpaid May 2017 Rent	\$1,139.00
Unpaid June 2017 Rent	1,400.00
Unpaid July 2017 Rent	1,400.00
Unpaid August 2017 late fee	25.00
Less Security Deposit	-600.00
Total Monetary Order	\$3,364.00

The landlord is provided with this Order in the above terms and 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 Orders 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: September 06, 2017

Residential Tenancy Branch