



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANDALL NORTH REAL ESTATE SERVICES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR; FFL

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 left the teleconference hearing connection open until 11:14 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 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 gave sworn testimony supported by written statements from two employees of the landlord's firm that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted on the tenant's door on February 8, 2018. I find that the tenant was deemed served with the 10 Day Notice on February 11, 2018, in accordance with sections 88 and 90 of the *Act*. The landlord also testified that they sent the tenant a copy of the dispute resolution hearing package and written evidence package by registered mail on March 20, 2018. The landlord provided 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 these packages by registered mail on March 25, 2018.

At the hearing, the landlord requested authorization to amend their monetary claim for unpaid rent from \$1,950.00 to \$3,900.00, the amount now owing, as a result of the

tenant's failure to pay rent for March and April 2018. As the tenant was clearly aware that these payments were due, I allowed the landlord's request to amend the monetary award sought to \$3,900.00, plus recovery of the landlord's filing fee.

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

This fixed term tenancy commenced on May 15, 2017 and is scheduled to end on March 31, 2018. Monthly rent is set at \$975.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$487.50 security deposit, paid on June 1, 2017.

The landlord's written evidence sought a monetary award for unpaid rent of \$975.00 owing for each of July 2017, and February 2018. The landlord testified that the tenant has failed to make any payments to the landlord since the 10 Day Notice was issued to the tenant. As noted above, the landlord gave sworn testimony that no rent has been paid for either of March or April 2018, amounts which have been added to the landlord's claim for a monetary award.

Analysis

The tenant failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice. The tenant has not made 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 led to the end of their tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by February 21, 2018. 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 tenant. 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. 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. Section 26(1) of the *Act* establishes that “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.”

In this case, there is undisputed evidence that the tenant has not paid any of their rent owing for July 2017, February 2018, March 2018 and April 2018. Under these circumstances, I allow the landlord’s application for a monetary award of \$3,900.00, for unpaid rent owing for these four months.

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.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application from the tenant.

Conclusion

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 filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order under the following terms, which allows the landlord to recover unpaid rent owing and the filing fee for this application and to retain the tenant’s security deposit:

Item	Amount
Unpaid July 2017 Rent	\$975.00
Unpaid February 2018 Rent	975.00
Unpaid March 2018 Rent	975.00

Unpaid April 2018 Rent	975.00
Less Security Deposit	-487.50
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$3,512.50

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders 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: April 09, 2018

Residential Tenancy Branch