



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, 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, utilities and losses pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; 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 11:15 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's representative (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. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord entered sworn testimony and written evidence in the form of a witnessed and signed Proof of Service Document attesting to the posting of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on April 3, 2018. I find that the tenant was deemed served with this Notice on April 6, 2018, in accordance with section 88 of the *Act*. The landlord gave undisputed sworn testimony and written evidence that a copy of the landlord's dispute resolution hearing package and written evidence were sent to the tenant by registered mail on May 25, 2018. The landlord provided the Canada Post Tracking Number to confirm this registered mailing and gave sworn testimony that Canada Post's Online Tracking system revealed that the

tenant signed for receipt of these packages on May 31, 2018. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with these documents on May 28, 2018, the fifth day after their registered mailing package.

At the commencement of this hearing, the landlord requested authorization to increase the amount of the monetary award requested from \$1,260.00 (plus the recovery of the landlord's filing fee) to \$1,900.00 (plus the recovery of the filing fee). This increase was to reflect a further \$600.00 in unpaid rent and \$40.00 in unpaid water bills that have become due in June 2018, since the landlord filed this application. As the tenant clearly would have known that these amounts had also become owing, I allowed this request to amend the original application to reflect these additional amounts that have become owing.

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, utilities and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security 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 landlord entered into written evidence a copy of the month-to-month tenancy agreement that the parties signed on January 27, 2017. According to the terms of this tenancy agreement, monthly rent is set at \$600.00, payable in advance on the first of each month, plus a \$40.00 monthly payment for the provision of water to the rental unit. The landlord continues to hold the tenant's \$300.00 security deposit paid in January 2017.

The landlord issued the 10 Day Notice as the landlord maintained that the tenant had failed to pay rent that was owing as of April 1, 2018. The landlord testified that the tenant has not paid anything further towards this tenancy since the 10 Day Notice was issued.

The landlord's amended application for a monetary award of \$1,900.00 plus the \$100.00 filing fee reflected the following items the landlord claimed remained owing for this tenancy:

Item	Amount
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Unpaid April 2018 Rent	\$595.00
Unpaid May 2018 Rent	600.00
Unpaid May 2018 Water Bill	40.00
Late Fee	25.00
Unpaid June 2018 Rent	600.00
Unpaid June 2018 Water Bill	40.00
Total Monetary Award Requested	\$1,900.00

Analysis

Section 46(2) of the *Act* requires that a notice under this section must comply with section 52 [*form and content of notice to end tenancy*]. Section 52 of the *Act* reads in part as follows:

- 52 *In order to be effective, a notice to end tenancy must be in writing and must...*
- (a) be signed and dated by the landlord or tenant giving the notice,*
 - (b) give the address of the rental unit,*
 - (c) state the effective date of the notice,*
 - (d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
 - (e) when given by a landlord, be in the approved form.*

I find that the landlord's 10 Day Notice complies with the requirements of section 52 of the *Act*.

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 effective date of the notice. In this case, this required the tenant to vacate the premises by April 16, 2018. As that has not occurred and in accordance with section 55 of the *Act*, 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. 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, I find that there is undisputed sworn testimony and written evidence to support the landlord's claim for a monetary award for unpaid rent and utilities. I issue a monetary award in the landlord's favour in the claimed amount of \$1,900.00 to compensate the landlord for the unpaid rent and utilities.

In accordance with sections 38 and 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of this monetary award issued. As the landlord has been successful in this application, I allow the landlord to recover the \$100.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) 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 and utilities, and the filing fee for this application, and to retain the tenant's security deposit:

Item	Amount
Unpaid April 2018 Rent	\$595.00
Unpaid May 2018 Rent	600.00
Unpaid May 2018 Water Bill	40.00
Late Fee	25.00
Unpaid June 2018 Rent	600.00
Unpaid June 2018 Water Bill	40.00
Less Security Deposit	-300.00
Filing Fee	100.00
Total Monetary Order	\$1,700.00

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: June 26, 2018

Residential Tenancy Branch