



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S OPR FFL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession pursuant to section 46;
- A monetary order for unpaid rent pursuant to section 67;
- An order to retain the security deposit pursuant to section 72;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing. The tenant did not attend at the hearing. I kept the teleconference line open from the time the hearing was scheduled, plus an additional ten minutes, to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant had been provided. The landlord was given an opportunity to present affirmed testimony, call witnesses and submit evidence.

The landlord testified he sent the Notice of Hearing and Application for Dispute Resolution to the tenant by registered mail on October 17, 2018. He provided the Canada Post tracking number referenced on the first page of this decision in support of service. Section 90 of the *Act* deems the tenant to have received the documents 5 days later, on October 22, 2018. I find the landlord served the tenant pursuant to sections 89 and 90 on October 22, 2018,

Issue(s) to be Decided

The issues to be decided:

Is the landlord entitled to an order of possession pursuant to section 46 of the *Act*?

Is the landlord entitled to a monetary order pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the security deposit pursuant to section 72 of the *Act*?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The landlord testified he entered into a month-to-month tenancy agreement with the tenant commencing January 15, 2016 for rent of \$750.00 a month payable on the first of the month. At the start of the tenancy, the tenant provided a security deposit of \$375.00 and a pet deposit of \$100.00 (together being \$475.00 and referred to as “the deposits”). The landlord holds the deposits. The tenant has not provided written authorization to the landlord to apply the deposits to outstanding rent.

The landlord submitted a copy of the tenancy agreement.

The landlord testified the tenant paid rent on September 1, 2018 and has not paid rent for October 2018. The landlord provided a Monetary Order Worksheet showing the rent owing during the relevant portion of this tenancy.

The landlord testified he issued a 10 Day Notice to End Tenancy (“Ten-Day Notice”) and served the tenant by attaching the Notice to the door of the unit on October 2, 2018, thereby effecting service under section 90 of the *Act* 3 days later, that is, on October 5, 2018. The landlord submitted a copy of the Ten-Day Notice and a witnessed Proof of Service form. The Ten-Day Notice has an effective date of October 13, 2018 (corrected to October 15, 2018).

The landlord testified the tenant did not pay the outstanding rent within 5 days after service of the Ten-Day Notice and did not bring an application for dispute resolution.

The landlord requests an order of possession, a monetary award for \$750.00 for rent outstanding for October 2018, authorization to apply the deposits of \$475.00 to the monetary award, and reimbursement of the filing fee, calculated as follows:

ITEM	AMOUNT
Outstanding rent	\$750.00
Reimbursement of filing fee	\$100.00
(Less deposits)	(\$475.00)
Monetary Order Requested	\$375.00

Analysis

I have reviewed all documentary evidence and testimony.

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*.

I find the landlord served the tenant with the Ten-Day Notice on October 5, 2018 in accordance with sections 88 and 90 of the *Act*.

I find the tenant did not pay the overdue rent or dispute the Ten-Day Notice within the five-day period following service.

Therefore, pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, October 13, 2018, (corrected to October 15, 2018) requiring the tenant to vacate the rental unit by that date.

As the tenant continues to occupy the unit, I find the landlord is entitled to an order of possession under section 46, effective two days after service.

I therefore grant the landlord an order of possession effective two days after service.

As the landlord was successful in this application, I grant a monetary order in the amount of \$100.00 for reimbursement of the filing fee.

Based on the uncontradicted evidence of the landlord, I grant the landlord a monetary award for outstanding rent in the amount of \$750.00.

Further to section 72, I grant the landlord authority to apply the security deposit to the monetary award.

As the landlord was successful in this application, I grant a monetary award in the amount of \$100.00 for reimbursement of the filing fee.

In summary, I grant the landlord a monetary order in the amount of \$375.00 calculated as follows:

ITEM	AMOUNT
Outstanding rent	\$750.00
Reimbursement of filing fee	\$100.00
(Less security deposit)	(\$475.00)
Monetary Order	\$375.00

Conclusion

I grant the landlord a monetary order in the amount of **\$375.00**. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) to be enforced as an order of that Court.

I grant the landlord an order of possession **effective two (2) days** after service on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be 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: November 22, 2018

Residential Tenancy Branch