



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

On October 12, 2018, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession for unpaid rent based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, seeking to retain the security deposit to apply to this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On November 2, 2018, the Landlord submitted an Amendment to his Application seeking to increase the amount of monetary compensation pursuant to Section 67 of the *Act*.

The Landlord attended the hearing with L.S. attending as an agent for the Landlord; however, the Tenant did not appear. The Landlord and his agent provided a solemn affirmation.

The Landlord advised that the Notice of Hearing package and evidence was served to the Tenant by hand on October 12, 2018 with L.S. as his witness. The Landlord also advised that he served the amended Application to the Tenant by hand on November 2, 2018. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenant was served the Notice of Hearing package, evidence, and Amendment.

The Landlord acknowledged the evidence submitted and was given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral

and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to apply the security deposit towards the unpaid rent?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord stated that tenancy started on October 1, 2018 and that rent was \$1,500.00 per month, due on the first of each month. A security deposit of \$750.00 was paid.

He submitted that the Tenant had not paid October 2018 rent, so he served the Notice to the Tenant on October 2, 2018 by hand with L.S. as his witness. The Notice indicated that \$1,500.00 was outstanding on October 1, 2018. The effective end date of the Notice was October 2, 2018.

The Landlord confirmed that the Tenant did not pay the rent arrears nor has the Tenant paid November 2018 rent.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

As outlined above, the undisputed evidence is that the rent for October 2018 was not paid in full when it was due, nor was it paid within five days of the Tenant being served the Notice. In addition, the undisputed evidence is that the Tenant did not dispute the Notice within the five days of being served the Notice. As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession that takes effect **two days after service of this Order** on the Tenant.

I also find that the Landlord is entitled to compensation for unpaid rent. As such, I award the Landlord a monetary award in the amount outlined below.

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. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of the total rent arrears.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
October rent arrears	\$1,500.00
November rent arrears	\$1,500.00
Less security deposit	-\$750.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$2,350.00

Conclusion

I grant an Order of Possession to the Landlord **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 provide the Landlord with a Monetary Order in the amount of **\$2,350.00** 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 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