



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNLDC-S, FFL (landlord); CNR (tenant)

Introduction

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

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession pursuant to section 46; and
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*.

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

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten-Day Notice”) pursuant to section 49.

The tenant appeared. The landlord’s agents RO and NO (“the landlord”) appeared on behalf of the landlord. The landlord testified the landlord personally served the tenant with the Notice of Hearing and Application for Dispute Resolution personally on April 1, 2019. I find the landlord served the tenant pursuant to section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession pursuant to section 46; and
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*.

Is the tenant entitled to the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten-Day Notice") pursuant to section 49.

Background and Evidence

The parties agreed that the tenancy began on December 10, 2005. The parties also agreed that the monthly rent was originally \$1,350.00 per month. The landlord failed to provide any supporting evidence that the rent was increased in accordance with the *Act* although the tenant testified he understood it had been increased to \$1,750.00, which the landlord testified is not correct.

The parties also agreed that rent was due on the 25th day of each month. A copy of the original tenancy agreement was submitted in evidence.

The parties agreed the tenant provided a security deposit of \$675.00 at the beginning of the tenancy which the landlord holds. The tenant has not provided authorization to the landlord to retain any of the security deposit.

The landlord submitted a Monetary Order Worksheet and a list of cheques returned NSF in support of the landlord's testimony that rent up to and including March 2019 was outstanding for a period of nine month for a total owing of \$12,150.00. The tenant agreed rent is outstanding in that amount.

The parties agreed that the Ten-Day Notice is dated March 22, 2019 and that the tenant received it on the same day. The tenant acknowledged service on March 22, 2019. The amount owing listed on the Ten-Day Notice is \$12,150.00 on March 1, 2019 in outstanding rent.

The 10 Day Notice is signed by the landlord and indicates an effective vacancy date of March 22, 2019. A copy of the Ten-Day Notice was submitted in evidence. The Notice required the tenant to pay the rent to the landlord or file an Application for Dispute Resolution within five days. The tenant filed an Application to cancel the Ten-Day Notice on March 28, 2019.

The landlord testified the tenant had not paid the amount owing and did not dispute the Notice within 5 days. The landlord testified the amount of \$12,150.00 is outstanding. The parties agreed the tenant continued to reside in the unit.

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 tenant was served with the Ten-Day Notice on March 22, 2019 in accordance with 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 (being April 2, 2019) 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.

Based on the uncontradicted evidence of the landlord and the acknowledgement by the tenant that the amount is owing for outstanding rent, I grant the landlord a monetary award against the tenant pursuant to section 67 for outstanding rent in the amount of **\$12,150.00.**

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

Further to section 72, I award the landlord authority to apply the security deposit of \$675.00 to the monetary award as requested.

In summary, I grant the landlord a monetary order of **\$11,475.00** as follows:

ITEM	AMOUNT
Outstanding rent owing March 1, 2019	\$12,150.00
Reimbursement of filing fee	\$100.00
(Less security deposit)	(\$675.00)
Monetary Order	\$11,575.00

Conclusion

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

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.

I grant the landlord a monetary order in the amount of **\$11,575.00**. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia (Small Claims Division) 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: May 13, 2019

Residential Tenancy Branch