



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request that was made on September 16, 2019 and adjourned to a participatory hearing. This hearing was convened pursuant to the Landlord's Application seeking the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent;
- a monetary order for unpaid rent; and
- the return of the filing fee.

The Tenant and the Landlord's Agent, J.P., attended the hearing at the appointed date and time and provided affirmed testimony. J.P. testified that the Landlord served her Application and documentary evidence package to the Tenant by registered mail on September 29, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on December 1, 2018. The Tenant is required to pay rent in the amount of \$900.00 which is due to be paid to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$450.00 which the Landlord continues to hold.

J.P. testified the Tenant did not pay rent when due in September 2019. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 2, 2019 (the "10 Day Notice") with an effective vacancy date of September 16, 2019. At that time, rent in the amount of \$900.00 was outstanding. J.P. testified that the Landlord served the 10 Day Notice to the Tenant by posting it to the Tenant's door on September 2, 2019.

In addition, J.P. testified that the Tenant also failed to pay rent when due for October, November, and December 2019. The Landlord stated that currently, rent in the amount of \$3,600.00 is outstanding, and the Tenant continues to occupy the rental unit.

In response, the Tenant confirmed that she received the 10 Day Notice on September 2, 2019. The Tenant did not dispute the fact that she has not paid rent when due to the Landlord from September to December 2019 in the amount of \$3,600.00. Instead, the Tenant stated that she felt justified in not paying rent as the building she lives in is infested with bed bugs and is dirty.

J.P. stated that the Landlord has hired a pest control company who has fumigated the building on three occasions which seems to have eliminated the bed bug infestation. The Tenant stated that she continues to experience issues with bed bugs.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Section 46 of the Act states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The Landlord served the Tenant with the 10 Day Notice dated September 2, 2019 with an effective vacancy date of September 16, 2019, by posting it to the Tenant's door on September 2, 2019. The Tenant confirmed receipt on September 2, 2019. I find that the 10 Day Notice was sufficiently served, pursuant to sections 88 of the Act.

Section 46(4) says that within 5 days after receiving a notice under this section, the Tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant had until September 7, 2019 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept that the parties agreed that after service of the 10 Day Notice, the Tenant has made no payments towards the amount of unpaid rent. As the Tenant did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me that the Tenant disputed the 10 Day Notice, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the corrected effective date of the 10 Day Notice, September 16, 2019, pursuant to section 46(5) of the Act.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$3,600.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$3,250.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$3,600.00
Filing fee:	\$100.00
<i>LESS security deposit:</i>	<i>-\$450.00</i>
TOTAL:	\$3,250.00

Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. If the Tenant fails to comply with the order of possession it may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$3,250.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: December 02, 2019

Residential Tenancy Branch