



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNDL-S MNRL-S OPU

Introduction

On December 9, 2019 the Landlord submitted an Application for Dispute Resolution (the “Application”), seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- a monetary order for damage or compensation;
- a monetary order for unpaid rent or utilities;
- an order granting authorization to retain the security deposit;
- an order of possession for unpaid rent and utilities; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 9:30 A.M. on February 6, 2020 as a teleconference hearing. The Landlord appeared and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 22 minutes before the call ended. 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 persons who had called into this teleconference.

The Landlord testified the Application and documentary evidence package was served to the Tenant in person on December 12, 2019. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on December 12, 2019. The Tenant did not submit documentary evidence in response to the Application.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement regarding payment of rent and utilities. The Landlord's request for a monetary order for money owed for damage or compensation is dismissed with leave to reapply.

The Landlord was 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 a monetary order for unpaid rent and utilities, pursuant to Section 67 of the *Act*?
2. Should the Landlord be authorized to apply the security deposit against their claim, in accordance with Section 38 and 72 of the *Act*?
3. Is the Landlord entitled to an order of possession for unpaid rent and utilities, pursuant to Section 55 of the *Act*?
4. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord testified that the tenancy began on July 1, 2019. Rent in the amount of \$1,200.00 is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$600.00, which the Landlord continues to hold. The Landlord stated that the Tenant is required to pay half of the utility costs to the Landlord.

The Landlord testified the Tenant did not pay rent in the amount of \$1,200.00 when due on November 1, 2019. The Landlord stated that the Tenant also failed to pay utilities in

the amount of \$76.00. Subsequently, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 8, 2019 (the "10 Day Notice") with an effective vacancy date of November 18, 2019. The Landlord stated that the 10 Day Notice was served to the Tenant in person on November 8, 2019.

The Landlord testified that she received a partial payment of \$200.00 from the Tenant on November 11, 2019 which was applied to an outstanding balance of rent owing for October 2019. The Tenant paid the Landlord \$500.00 on December 1, 2019 which was applied to the outstanding November 2019 rent. The Landlord testified that the Tenant failed to pay rent when due for December 2019 and January 2020. The Landlord is seeking a monetary order in the amount of \$3,100.00 for the remaining balance of rent owing for November 2019, December 2019 and January 2020.

The Landlord stated that the Tenant has also failed to pay utilities in the amount of \$76.00 for August 22, 2019 to October 22, 2019 which was indicated on the 10 Day Notice. The Tenant also failed to pay the Landlord \$124.00 for utilities owed to the Landlord from October 22, 2019 to December 19, 2019. The Landlord provided a copy of the utility bills in support. The Landlord stated that she has not yet received the most recent utility bill, however, the Landlord stated that the Tenant will also owe for utilities from December 19, 2019 to present.

The Landlord is seeking an order of possession based on the unpaid rent and utilities. If successful, the Landlord is seeking the return of the filing fee. As noted above, the Tenant did not attend the hearing to dispute the Landlord's evidence.

Analysis

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

Section 26 of the Act explains that the 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. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act.

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.

I find based on the Landlord's uncontested testimony that the Landlord served the 10 Day Notice dated November 8, 2019 with an effective vacancy date of November 18, 2019, to the Tenant in person on November 8, 2019. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received on the same date. I find the Tenant is deemed to have received the 10 Day Notice on November 8, 2019.

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 November 13, 2019 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept the Landlord's undisputed testimony that after service of the 10 Day Notice, the Tenant failed to pay the remaining balance of rent owing in in full for November 2019 and has also failed to pay rent when due for December 2019 and January 2020. 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 effective date of the 10 Day Notice November 18, 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 as the effective date of the 10 Day Notice has passed, 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.

In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$3,100.00. I also find that the Landlord has provided sufficient evidence that the Tenant has failed to pay utilities in the amount of \$200.00. While the Landlord stated that there are further amount of outstanding utilities owing, I find that the Landlord has not yet received the current utility bill to confirm this amount. As such, I find that the Landlord is not entitled to any additional amounts of utilities owed. The Landlord is at liberty to reapply for monetary compensation for the outstanding balance once she receives confirmation of the amount owed.

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 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 \$2,800.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$3,100.00
Unpaid Utilities:	\$200.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(<i>\$600.00</i>)
TOTAL:	\$2,800.00

Conclusion

The Tenant has breached the *Act* by not paying rent and utilities 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. This order should be served as soon as possible and 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 \$2,800.00. The monetary order should be served to the Tenant as soon as possible and 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: February 06, 2020

Residential Tenancy Branch