

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. As English was not the tenant's first language and he had difficulty communicating in the English language in this telephone conference, the tenant was assisted by a female friend who was able to communicate with him and ensure that he was able to participate in these proceedings. The landlord said that he handed a 10 Day Notice to End Tenancy for Unpaid Rent to an adult who attended the hearing on November 3, 2010. The landlord testified that he sent the tenant his application for dispute resolution hearing package by registered mail on November 11, 2010. He provided a written copy of the Canada Post Tracking Number to confirm this mailing. The tenant said that he received both the notice to end tenancy and the landlord's application for dispute resolution. I am satisfied that the landlord served these documents to the tenant in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent and utilities? Is the landlord entitled to a monetary Order for unpaid rent and utilities? Is the landlord entitled to recover his filing fees for this application from the tenant?

Background and Evidence

This month-to-month tenancy commenced on July 1, 2010. Monthly rent of \$600.00 was due on the first of each month. The landlord continues to hold the tenant's \$300.00 security deposit.

The parties agreed that the tenant had not paid \$170 of his October 2010 rent, nor had he paid any of his November 2010 rent. The landlord testified that the tenant still owes \$19.00 in hydro from this tenancy. The landlord asked that the monetary Order include a provision for the December 2010 rent which also remains unpaid. He asked for an Order of Possession and for recovery of his filing fee.

Analysis

Order of Possession

The tenant failed to pay the \$690.00 identified as owing within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on November 14, 2010. As he has not vacated the rental unit, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Monetary Order

Based on the undisputed evidence presented, I find that the landlord is entitled to a monetary award of \$170.00 for unpaid October 2010 rent, of \$600.00 for unpaid November 2010 rent, and \$600.00 for unpaid December 2010 rent. I find that the landlord is also entitled to a monetary award of \$19.00 for unpaid utilities.

Although the landlord did not formally apply to retain the tenant's security deposit, he asked to do so at the dispute resolution hearing and his calculations clearly indicate that

it was his intent to do so. In accordance with the offsetting provisions of section 72(2) of the *Act*, I allow the landlord to retain the tenant's security deposit plus interest in partial satisfaction of the landlord's monetary award. No interest is payable over this period.

I allow the landlord to recover his \$50.00 filing fee from the tenant.

Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue the landlord a monetary Order in the following terms which allows the landlord to retain the tenant's security deposit and to recover his filing fee for this application:

Item	Amount
Unpaid Portion of October 2010 Rent	\$170.00
Unpaid November 2010 Rent	600.00
Unpaid December 2010 Rent	600.00
Unpaid Portion of Hydro Bill	19.00
Less Security Deposit	-300.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,139.00

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.