

DECISION

Dispute Codes OPR, MNR

Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant did not attend this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord provided witnessed written evidence that he handed the tenant the 10 Day Notice to End Tenancy for Unpaid Rent on January 2, 2011. He testified that he sent the tenant a copy of his dispute resolution hearing package by registered mail on January 12, 2011. He provided a Canada Post Tracking Number to confirm this mailing. He said that he spoke with the tenant after he sent the package and she confirmed having received it. I am satisfied that the landlord has served these documents to the tenant in accordance with the *Act*.

Although the landlord's application requested a monetary award of \$1,980.00, at the hearing the landlord testified that he recently learned that he has been charging the tenant \$15.00 too much rent each month since December 1, 2009. He asked that his application for a monetary award be reduced by \$210.00 to reflect the 14 months he inadvertently charged the tenant too much rent. I have revised his application accordingly, noting that he has applied for a monetary award of \$1,770.00.

Issues(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?

Background and Evidence

This month-to-month tenancy commenced on July 1, 2008. Monthly rent was set at \$1,000.00 as of December 1, 2009, payable on the first of each month. The landlord said that he continues to hold the tenant's \$475.00 security deposit paid on July 8, 2008 plus interest.

The landlord said that he issued the 10 Day Notice for Unpaid Rent when the tenant failed to pay \$980.00 of her December 2010 rent and \$1,000.00 of her January 2011 rent. He gave undisputed testimony that the tenant has not paid any of her outstanding rent since he issued her the 10 Day Notice on January 2, 2011.

AnalysisOrder of Possession

The tenant failed to pay the rent 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 the effective date of the notice. In this case, this required the tenant to vacate the premises by January 13, 2011. As that has not occurred, 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 Award

Based on the undisputed evidence of the landlord, I issue a monetary award in the landlord's favour in the amount of \$1,770.00, the amount of rent owing from this tenancy.

Although the landlord has not applied to retain the tenant's security deposit, in accordance with the offsetting provisions of section 72 of the *Act* I allow the landlord to retain the tenant's security deposit plus interest in partial satisfaction of this monetary award.

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 a monetary Order in the landlord's favour in the following terms which allows the landlord to recover rent owing from this tenancy and to retain the tenant's security deposit plus interest in partial satisfaction of this monetary award.

Item	Amount
Unpaid Rent Owing from this Tenancy	\$1,770.00
Less Security Deposit plus Interest (\$475.00 + \$3.45 = \$ 478.45)	-478.45
Total Monetary Order	\$1,291.55

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*.