



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF, O

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;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act* pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; 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. The landlord and the tenant agreed that the landlord posted a 10 Day Notice for Unpaid Rent on the tenant's door on January 6, 2011 and sent the dispute resolution hearing package to the tenant by registered mail on January 19, 2011. The tenant has received this material. I am satisfied that the landlord served these documents to the tenant in accordance with the *Act*.

The landlord also provided written evidence of his provision of his evidence package to the tenant by registered mail on January 20, 2011. He provided the Canada Post Tracking Number for this mailing. The tenant said that he received the landlord's evidence package, but it contained only copies of his email exchanges with the landlord.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary award for unpaid rent and loss arising out of this tenancy? Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover his filing fee for this application?

Background and Evidence

This one-year fixed term tenancy commenced on April 1, 2010. Monthly rent was set at \$625.00, payable on the first of each month. The landlord continues to retain the tenant's \$312.50 security deposit plus interest paid on April 1, 2010.

The landlord submitted written and oral evidence that the tenant still owes unpaid rent of \$2,500.00 from October 2010 until February 2011. The landlord also requested recovery of the \$50.00 filing fee for this application and for authorization to retain the tenant's security deposit. The landlord requested an Order of Possession for unpaid rent, noting that no portion of the \$625.00 identified as owing for January 2011 has been paid by the tenant.

The tenant said that his rent is paid by a third party and he had cheque numbers to confirm that these payments have been made. He said that the landlord's bookkeeping is poor and that little credibility should be given to the landlord's rental records. He said that he has requested the issuance of receipts in emails to the landlord but the landlord has refused to issue these to him. He could not identify any specific emails or dates when he requested the issuance of these receipts. The landlord said that receipts are not usually issued for direct deposits from third parties. The landlord was unaware of a request for receipts for the rental payments on the tenant's behalf.

Analysis

I am satisfied that the landlord's dispute resolution hearing package and the materials that the tenant admitted receiving provided the tenant with sufficient notice that the landlord was seeking a monetary award for unpaid rent dating from October 2010 until the present. Although the tenant said that he had written evidence that showed payments had been made by third parties on his behalf to the landlord, he did not enter any of this material into evidence before the hearing. I am satisfied that the tenant knew the case against him and did not avail himself of the opportunity to submit whatever written evidence he had to disprove the landlord's claims.

Order of Possession

The tenant has provided insufficient evidence to demonstrate that he or someone acting on his behalf paid any portion of his January rent 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 January 20, 2010. As that has not occurred, I find that the landlord is entitled to an Order of Possession to take effect by one o'clock in the afternoon on Monday, February 7, 2011. 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 by that time on February 7, 2011, the landlord may enforce this Order in the Supreme Court of British Columbia.

Monetary Award

Based on the oral testimony of the parties and the written evidence submitted by the landlord, I find that the landlord is entitled to a monetary award for \$100.00 for October 2010, \$525.00 for November 2010, and \$625.00 for each of December 2010, January 2011 and February 2011, and four months of late fees at \$25.00 each. I include a monetary award for February 2011, as I find it unlikely that the landlord will be able to obtain rent from anyone else for this rental unit in February 2011.

I allow the landlord to retain the tenant's security deposit with interest in partial satisfaction of the monetary award. No interest is payable over this period. I allow the landlord to recover the filing fee for this application.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective at one o'clock in the afternoon on February 7, 2011. 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 following terms which allows the landlord to recover unpaid rent, late fees and the filing fee, and to retain the tenant's security deposit.

Item	Amount
Unpaid October 2010 Rent	\$100.00
Unpaid November 2010 Rent	525.00
Unpaid December 2010 Rent	625.00
Unpaid January 2011 Rent	625.00
Unpaid February 2011 Rent	625.00
Late Fees (4 months @ \$25.00 each)	100.00
Less Security Deposit	-312.50
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$2,337.50

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*.