

DECISION

Dispute Codes OPR, MNR, MNSD, FF

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 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 the 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 testified that he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on September 8, 2011. The tenant confirmed receiving this Notice. The landlord testified that he sent a copy of the landlord's dispute resolution hearing package to the tenant by registered mail on September 21, 2011. The landlord provided a Canada Post Tracking Number to confirm this mailing. The tenant confirmed receiving this package. I am satisfied that the landlord served these documents in accordance with the *Act*.

At the commencement of the hearing, the landlord asked to increase the amount of his requested monetary award from \$940.00 to \$1,880.00 to reflect the tenant's non-payment of rent for October 2011. I agreed to this request, noting that the landlord's original notice of application stated the landlord's intention to seek recovery of the October rent and late fee if the tenant did not pay his October rent.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This one-year fixed term tenancy commenced on August 1, 2011. Monthly rent is set at \$915.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$457.50 security deposit paid on July 21, 2011.

The parties agreed that the tenant has not paid any portion of his September or October 2011 rent, or the \$25.00 late fees applied by the landlord in accordance with the residential tenancy agreement.

Analysis – Order of Possession

The tenant failed to pay the September 2011 rent within five days of receiving the 10 Day Notice. 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 September 21, 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.

Analysis – Monetary Order

Based on the undisputed evidence presented by the parties, I find that the landlord is entitled to a monetary award of \$940.00 for each of September and October 2011. These monthly awards are comprised of \$915.00 in base rent and \$25.00 as a late charge to be added to the rent for each of these months.

I allow the landlord to retain the tenant's security deposit plus applicable interest to partially offset this monetary award. No interest is payable over this period. Since the landlord has been successful in this application, I allow the landlord to recover the \$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 a monetary Order in the landlord's favour in the following terms which allows the landlord to recover unpaid rent and the filing fee for this application and to retain the tenant's security deposit:

Item	Amount
Unpaid September 2011 Rent (\$915.00 + \$25.00 = \$940.00)	\$940.00
Unpaid October 2011 Rent (\$915.00 + \$25.00 = \$940.00)	940.00
Less Security Deposit	-457.50
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,472.50

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*.