



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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 for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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.

The tenant did not attend this hearing, although I waited until 1:42 p.m. in order to enable him to connect with 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 entered written evidence, confirmed by oral testimony at the hearing, that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted on the tenant's door at 7:00 a.m. on September 4, 2011. The landlord also testified that the landlord sent a copy of the dispute resolution hearing package to the tenant by registered mail on September 23, 2011. The landlord entered into written evidence a copy of the Canada Post Tracking Number and Customer Receipt for this mailing. I am satisfied that the landlord has served these documents in accordance with the *Act*.

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 and losses arising out of this tenancy? 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 fixed term tenancy commencing on February 1, 2011 was scheduled to end on June 31, 2012. Monthly rent set at \$850.00 was reduced by the landlord to \$744.00

due to a \$106.00 monthly discount offered to the tenant for signing a tenancy agreement of at least one year. The landlord continues to hold the tenant's \$425.00 security deposit paid on January 16, 2011.

The landlord applied for a monetary award of \$2,232.00. This amount was for unpaid rent of \$744.00 for each of August and September 2011, and \$744.00 for loss of rent for October 2011.

The landlord's resident manager testified that the tenant placed a cheque for \$1,600.00 in the mail slot of the landlord's office on or about October 8, 2011. Although this amount covered the \$1,488.00 identified as owing in the landlord's 10 Day Notice, it did not look after all of his outstanding rent for October 2011. Both of the landlord's representatives testified that the tenant is frequently late in his rent payments and leaves payments when he returns to this rental unit from his work in Alberta. The landlord's resident manager said that she tried to call the tenant a number of times, but was unable to reach him. The landlord's representatives said that no receipt has been issued to the tenant for his October 8, 2011 cheque and there has been no contact with the tenant since he left his cheque at the landlord's office.

Analysis – Order of Possession

The tenant failed to pay any portion of the rent identified as owing on the 10 Day Notice within five days of receiving that 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 17, 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 Award

Based on the undisputed evidence provided by the landlord, I find that there is outstanding rent arising out of this tenancy. Although the tenant paid \$1,600.00 of his unpaid rent on October 8, 2011, I find that by that date \$2,232.00 was owing. I find that the landlord is entitled to a monetary award for \$632.00 in unpaid rent for the difference between these two amounts.

Since the landlord has been successful in this application, I find that the landlord is entitled to recover his \$50.00 filing fee from the tenant.

I allow the landlord to retain the tenant's security deposit plus allowable interest in partial satisfaction of this monetary award. No interest is payable over this period.

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
August 2011 Rent	\$744.00
September 2011 Rent	744.00
October 2011 Rent	744.00
Less October 2011 Payment by Tenant	-1,600.00
Less Security Deposit	-425.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$257.00

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*.

Dated: October 24, 2011

Residential Tenancy Branch