



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 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. The landlord testified that he posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on September 7, 2011. At the commencement of the hearing, the tenant testified that he was away from his rental unit until September 9, 2011 when he received the 10 Day Notice posted on his door. Later in the hearing, the tenant testified that he did not receive the 10 Day Notice posted on his door on September 7, 2011, although he did receive it as part of the dispute resolution hearing package. The tenant confirmed that he received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on September 27, 2011. The tenant provided the Canada Post Tracking Number for the landlord's registered mail he received. I am satisfied that the landlord served the above 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? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy commenced by way of a one-year fixed term tenancy on June 1, 2009. There are two discrete rental units involved in this tenancy. The tenant subleases half of the space rented to him to another tenant. At present, this is a month-to-month tenancy for a monthly rental of \$1,200.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$600.00 security deposit paid on April 28, 2009.

The landlord applied for an Order of Possession and a monetary award of \$2,400.00. The monetary award was for unpaid rent owing from September and October 2011.

The landlord gave undisputed oral testimony that the parties entered into a mutual written agreement to end this tenancy on September 30, 2011. Although the tenant testified that he has rented new premises elsewhere and plans to vacate this rental unit by October 31, 2011, the landlord asked for an Order of Possession because he doubts the tenant will vacate the rental unit.

The tenant did not dispute the landlord's claim that he has not paid any portion of his September or October 2011 rent. He explained that his sub-tenant in the other suite has not paid him the \$600.00 in monthly rent she owes him for August, September or October 2011. He said that he has an Order of Possession to remove his tenant from the property. He testified that the landlord is partially responsible for his sub-tenant's non-payment of rent because the landlord spoke with that tenant and interfered with his sub-tenant.

The tenant also raised concerns about the payment of utility bills in this property which is not part of the landlord's application. The tenant also raised concerns about rodents in the rental property, another issue that is not before me.

Analysis – Order of Possession

Based on the undisputed evidence of both parties, 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 20, 2011. As that has not occurred, I find that the landlord is entitled to an Order of Possession that takes effect by 1:00 p.m. on October 31, 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 within the time required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Analysis – Monetary Order

Although it is unfortunate that the tenant has not received rent owed to him by his sub-tenant, this does not affect his responsibility to pay rent to the landlord. As noted above, other issues raised by the tenant have no bearing on the landlord's current application for a monetary Order for unpaid rent.

I find that the landlord is entitled to a monetary Order for unpaid rent of \$1,200.00 for each of September and October 2011. Since the landlord has been successful in this application, I find that the landlord is entitled to recover his filing fee for this application from the tenant. I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary Order issued in this decision. No interest is payable over this period.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective October 31, 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 landlord's favour in the following terms which allows the landlord to recover unpaid rent and his filing fee for this application and to retain the tenant's security deposit.

Item	Amount
Unpaid September 2011 Rent	\$1,200.00
Unpaid October 2011 Rent	1,200.00
Less Security Deposit	-600.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,850.00

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 25, 2011

Residential Tenancy Branch