



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord's property manager testified that he posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on August 19, 2011. The tenant confirmed that he received the 10 Day Notice. The landlord testified that she sent the tenant a copy of her dispute resolution hearing package by registered mail on September 27, 2011. She provided the Canada Post Tracking Number to confirm this mailing, which she said was returned by Canada Post as refused by the tenant. The landlord's property manager testified that he also posted a copy of the landlord's dispute resolution hearing package on the tenant's door. The tenant testified that he had received the posted copy of the landlord's dispute resolution hearing package and the landlord's written evidence. I am satisfied that the tenant was served with the 10 Day Notice, the landlord's dispute resolution hearing package and the landlord's written evidence 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?

Background and Evidence

This tenancy commenced initially as a one year fixed term tenancy on May 1, 2004. After the expiration of the initial term of the tenancy, this converted to a month-to-month tenancy. Monthly rent was initially set at \$973.50, but this was reduced to \$900.00 in recent years. Monthly rent is payable on the first of each month.

The tenant testified that he paid \$750.00 in security and pet damage deposits to the landlord's original property manager. Although the landlord and her current property

manager had no details about these deposits, the landlord said that she was not aware of any security or pet damage deposit paid to her previous property manager. She did not have details regarding the original tenancy agreement. As such, I accepted the tenant's oral evidence that he paid \$750.00 in security and pet damage deposits to the landlord's previous property manager. The landlord did not dispute this testimony.

The landlord applied for an Order of Possession as the tenant has not paid the \$8,482.50 in outstanding rent that was identified as owing in the 10 Day Notice. The landlord's written evidence sought a monetary award for the following unpaid rent as of September 26, 2011:

Item	Amount
Outstanding January 2011 Rent	\$182.50
Outstanding February 2011 Rent	900.00
Outstanding March 2011 Rent	900.00
Outstanding April 2011 Rent	900.00
Outstanding May 2011 Rent	900.00
Outstanding June 2011 Rent	900.00
Outstanding July 2011 Rent	900.00
Outstanding August 2011 Rent	900.00
Outstanding September 2011 Rent	900.00
Outstanding October 2011 Rent	900.00
Total Monetary Award Requested	\$8,282.50

These figures reflect \$2,000.00 in payments made by the tenant on August 20, 2011 which was applied to rent owing from 2010 and January 2011.

Analysis

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to resolve their dispute on the following terms:

1. Both parties agreed that the landlord's 10 Day Notice of August 19, 2011 will be cancelled with the effect that this tenancy will continue.

2. Both parties agreed that the tenant will pay \$900.00 by postal money order towards his outstanding rent by 3:00 p.m. on November 7, 2011.
3. Both parties agreed that the landlord is entitled to a monetary award of \$8,282.50 for outstanding rent owing as of the date of this hearing.
4. Both parties agreed that the landlord will retain the tenant's \$750.00 security and pet damage deposit plus interest paid when he commenced this tenancy in partial satisfaction of the landlord's monetary award.
5. The parties agreed that if the tenant complies with the terms of this agreement, this tenancy will end by 1:00 p.m. on December 1, 2011 and the tenant will vacate the premises by then.
6. The parties agreed that if the tenant does not pay \$900.00 by 3:00 p.m. on November 7, 2011, this tenancy will end by 1:00 p.m. on November 10, 2011 and the tenant will vacate the premises by then.
7. The parties agreed that in the event the tenant does not pay \$900.00 towards his outstanding rent on or before November 7, 2011, the landlord will be entitled to apply to the Residential Tenancy Branch for dispute resolution for a monetary award for unpaid rent for November 2011.
8. The parties agreed that this agreement constitutes a final and binding resolution of all issues in dispute from this tenancy at this time.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Orders of Possession to be used by the landlord if the tenant does not vacate the rental premises in accordance with their agreement. The Order of Possession effective on December 1, 2011 is to be utilized if the tenant complies with the term of this agreement requiring him to pay \$900.00 by 3:00 p.m. on November 7, 2011. I find that the Order of Possession effective on November 10, 2011 can only be utilized if the tenant fails to comply with the term of this agreement requiring him to pay \$900.00 by 3:00 p.m. on November 7, 2011. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Supreme Court of British Columbia.

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlord's favour in the following terms which allows the landlord to recover unpaid rent and to retain the tenant's security deposit plus interest:

Item	Amount
Outstanding January 2011 Rent	\$182.50
Outstanding February 2011 Rent	900.00
Outstanding March 2011 Rent	900.00
Outstanding April 2011 Rent	900.00
Outstanding May 2011 Rent	900.00
Outstanding June 2011 Rent	900.00
Outstanding July 2011 Rent	900.00
Outstanding August 2011 Rent	900.00
Outstanding September 2011 Rent	900.00
Outstanding October 2011 Rent	900.00
Less Security & Pet Damage Deposits Plus Interest (\$750.00 + \$26.56 = \$776.56)	-776.56
Total Monetary Order	\$7,505.94

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.

In order to implement the above settlement reached between the parties, I allow the landlord to apply for a monetary award for unpaid rent for November 2011 if the tenant does not abide by the terms of this agreement and pay \$900.00 towards his outstanding rent by November 7, 2011.

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 26, 2011

Residential Tenancy Branch