



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 for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; 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 1:30 p.m. hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on November 2, 2011. The landlord testified that she handed the tenant a copy of the landlord's dispute resolution hearing package on November 22, 2011. I am satisfied that the landlord served these documents in accordance with the *Act*.

At the hearing, the landlord testified that since applying for dispute resolution, the tenant has failed to pay his rent for December 2011. The landlord asked for permission to amend the amount of the monetary award sought in the application for dispute resolution from \$700.00 to \$1,400.00 to reflect the tenant's failure to pay his rent for December 2011. I agreed to amend this application to include consideration of unpaid rent for December 2011.

Issues(s) to be Decided

Is the landlord entitled to obtain an Order of Possession? 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 periodic tenancy commenced on March 1, 2011. Monthly rent is set at \$700.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$350.00 security deposit paid on or about March 1, 2011.

The landlord testified that the tenant has not paid any portion of the \$700.00 identified as owing on the 10 Day Notice, nor any portion of his December 2011 rent.

Analysis - Order of Possession

The tenant failed to pay the full portion of the rent identified as owing in the 10 Day Notice within five days of being served with 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 November 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 the landlord is entitled to a monetary award of \$1,400.00 for unpaid rent for November and December 2011.

The landlord testified that he continues to hold the tenant's security deposit of \$350.00 plus applicable interest from March 1, 2011 until the date of this decision. Over that period, no interest is payable on the landlord's retention of the security deposit. Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

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 November 2011 Rent	\$700.00
Unpaid December 2011 Rent	700.00
Less Security Deposit	-350.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,100.00

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: December 08, 2011

Residential Tenancy Branch