



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, 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 and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants 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 tenant who attended (the tenant) confirmed that she was handed a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by the landlord on November 7, 2011. The tenant also confirmed that the landlord handed them copies of his dispute resolution hearing package on December 14, 2011. I am satisfied that these documents were served by the landlord to the tenants 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 recover the filing fee for this application from the tenants?

Background and Evidence

This 14-month fixed term tenancy commenced on June 1, 2011. Monthly rent is set at \$1,900.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$950.00 security deposit paid on or about May 28, 2011.

The landlord issued the 10 Day Notice when the tenants had not paid \$1,000.00 of their October 2011 rent and their \$1,900.00 November 2011 rent. The parties agreed that the tenants made two payments of \$700.00 each during November 2011, both of which were accepted by the landlord for use and occupancy only. As of the end of November

2011, the landlord testified that \$1,500.00 remained owing. The parties agreed that the tenants have not paid any of their December 2011 rent.

The tenant said that the tenants have been trying to pay their outstanding rent, but have been unable to do so thus far. She offered to make arrangements to pay the outstanding rent to continue their tenancy. The landlord rejected this offer as the landlord has been dealing with outstanding rent for this tenancy since October 2011.

The landlord's application for a monetary award of \$5,400.00 included the following items:

Item	Amount
Unpaid November 2011 Rent	\$1,500.00
Unpaid December 2011 Rent	1,900.00
Loss of Rent for January 2012	1,900.00
Recovery of Filing Fee for this application	100.00
Total Monetary Award Requested	\$5,400.00

Analysis – Order of Possession

The tenants failed to pay all of the \$2,900.00 identified as owing in the 10 Day Notice within five days of receiving that Notice. The tenants have 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 tenants' 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 tenants 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(s). If the tenants do 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 landlord, I find that the landlord is entitled to a monetary award of \$1,500.00 in unpaid rent for November 2011, and \$1,900.00 in unpaid rent for December 2011. Due to the time of the month and year, and the difficulty that the landlord will likely encounter in trying to rent the premises to another tenant for January 2012, I allow \$950.00 for the landlord's anticipated loss of rent for January 2012. This represents one-half of the landlord's application for a monetary award for that month.

Although the landlord's application does not seek to retain the tenants' 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 has been successful in this application, I allow the landlord to recover his filing fee from the tenants.

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 tenants 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 and lost rent, to recover his filing fee for this application, and to retain the tenants' security deposit in partial satisfaction of the monetary award issued in this decision.

Item	Amount
Unpaid November 2011 Rent	\$1,500.00
Unpaid December 2011 Rent	1,900.00
Loss of Rent for January 2012	950.00
Recovery of Filing Fee for this application	100.00
Less Security Deposit	-950.00
Total Monetary Order	\$3,500.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) 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 20, 2011

Residential Tenancy Branch