



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 landlords' 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 their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 3:13 p.m. in order to enable her to connect with this hearing scheduled for 3:00 p.m. The landlords attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlords provided oral and written evidence that they posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on December 9, 2011. This 10 Day Notice identified \$1,700.00 as owing as of that date. The female tenant, BS, testified that the landlords sent the tenant a copy of their dispute resolution hearing package by registered mail on December 22, 2011. They provided a Canada Post Tracking Number to confirm this mailing. The female landlord testified that the tenant picked up this registered mail on January 5, 2012. I am satisfied that the landlords served these documents in accordance with the *Act*.

At the commencement of the hearing, the landlords testified that the tenant has not paid any of the \$1,700.00 identified as owing in the 10 Day Notice since the 10 Day Notice was issued to her. They requested a monetary award for unpaid rent for November and December 2011, and for January 2012. Although the landlords application for dispute resolution identified a requested monetary award of \$850.00, I am satisfied by the landlords' 10 Day Notice that the tenant realized that the landlords were seeking unpaid rent of \$1,700.00 for November and December 2011. The landlords described two months of rent as owing at a monthly rate of \$850.00 in the "Details of Dispute" in their application for dispute resolution. Since the landlords issued their application for dispute resolution, the tenant did not pay rent for either of these months or January 2012. Under these circumstances and as I am satisfied that the tenant is aware that the landlords are seeking unpaid rent arising from this tenancy, I allowed the landlords to

increase the amount of their requested monetary award to reflect the \$2,550.00 in rent now owing from this tenancy.

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 periodic tenancy was supposed to commence on October 1, 2011. The female landlord testified that the tenant moved into the premises on or about October 5, 2011. Monthly rent was set at \$850.00, payable in advance on the first of each month. The landlords continue to hold the tenants' \$400.00 security deposit paid on October 5, 2011.

As outlined above, the landlords testified that the tenant has not paid anything towards her rent since her initial payment for the month of October 2011.

Analysis - Order of Possession

The tenant failed to pay the \$1,700.00 identified as owing in the 10 Day Notice in full 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 December 21, 2011. As that has not occurred, I find that the landlords are entitled to a 2 day Order of Possession. The landlords 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 Order

Based on the undisputed evidence provided by the landlords, I find that the landlords are entitled to a monetary award for unpaid rent for November and December 2011, and January 2012, a total of \$2,550.00.

Although the landlords' application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period. As the landlords were successful in their

application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I provide the landlords with a formal copy of an Order of Possession to take effect within 2 days of the landlords' 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 award in the landlords' favour in the following terms which allows the landlords to recover unpaid rent and their filing fee for this application and to recover the tenants' security deposit.

Item	Amount
Unpaid November 2011 Rent	\$850.00
Unpaid December 2011 Rent	850.00
Unpaid January 2012 Rent	850.00
Less Security Deposit	-400.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$2,200.00

The landlords are 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: January 09, 2012

Residential Tenancy Branch