



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; 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 3:14 p.m. in order to enable her to connect with this hearing scheduled for 3:00 p.m. 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 deposited a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) in the tenant's mailbox on December 8, 2011. She said that the tenant discussed this Notice with the landlord after receiving it. The landlord testified that she sent a copy of the landlord's dispute resolution hearing package to the tenant by registered mail on January 10, 2012. She provided a Canada Post Tracking Number to confirm this mailing and again noted that the tenant told her that she had received this mailing. I am satisfied that the landlord served these documents in accordance with the *Act*.

At the hearing, the landlord testified that she was no longer seeking a monetary award for unpaid rent, as the tenant paid \$1,228.00 on January 10, 2012, accepted by the landlord for "use and occupancy only." She submitted into written evidence a copy of the landlord's receipt confirming the landlord's acceptance of the tenant's payment for use and occupancy only. On the basis of the landlord's oral request to withdraw the application for a monetary award for unpaid rent, this portion of the landlord's application is withdrawn.

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 to recover the filing fee for this application from the tenant?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Background and Evidence

This periodic tenancy commenced on May 1, 2008. The tenant's monthly rent for this rent geared to income rental unit was set at \$614.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$432.00 security deposit paid on May 26, 2008.

The landlord testified that the tenant told her that she was planning to vacate the rental premises by the end of December 2011. When that did not occur and after the tenant made her January 10, 2012, the landlord said that the tenant again assured her that she was planning to end her tenancy and vacate the rental unit by January 31, 2012. Although the landlord said that she had no reason to question the tenant's full intention to vacate the rental unit by that date, the landlord asked for an Order of Possession in case that does not occur. She requested an Order of Possession on the basis of the tenant's failure to pay all of the rent identified as owing in the 10 Day Notice within five days of receiving that Notice.

Analysis

The tenant failed to pay the rent identified as owing in the 10 Day Notice rent within five days of receiving that December 8, 2011 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 and the landlord's acceptance of the January 10, 2012 payment for use and occupancy only does not continue this tenancy, I find that the landlord is entitled to an Order of Possession to take effect by January 31, 2012. 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 in accordance with the Order of Possession, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord has been successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee for the landlord's application from the tenant. To accommodate this finding, I order the landlord to reduce the retained portion of the tenant's security deposit by that amount.

Conclusion

The landlord is provided with a formal copy of an Order of Possession to take effect by 1:00 p.m. on January 31, 2012. 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 order that the landlord is entitled to recover the \$50.00 filing fee for the landlord's application by reducing the amount of the tenant's security deposit by \$50.00. I order that the retained portion of the tenant's security deposit is reduced from \$432.00 plus applicable interest to \$372.00 plus applicable interest.

The landlord's application for a monetary award for unpaid rent is withdrawn.

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 19, 2012

Residential Tenancy Branch