



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 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 his filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1:43 p.m. in order to enable them to connect with this hearing scheduled for 1:30 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 entered into written evidence a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on the tenants' door on January 4, 2012. The landlord testified that the landlord's assistant manager handed Tenant SM a copy of the landlord's dispute resolution hearing package on January 17, 2012. I am satisfied that these documents were served 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? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This one-year fixed term tenancy commenced on October 7, 2011. Monthly rent is set at \$830.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$415.00 security deposit paid on October 7, 2011.

The landlord issued the 10 Day Notice on January 4, 2012, as at that time there was \$430.00 in unpaid rent owing for January 2012. The landlord testified that the tenants

paid \$415.00 towards the January 2012 rent on December 22, 2011. She said that the tenants paid a further \$215.00 on January 10, 2012, accepted by the landlord for use and occupancy only. The landlord applied for an Order of Possession and for a monetary award of the \$200.00 in outstanding rent owing from January 2012.

Analysis

The tenants failed to pay all of the rent identified as owing in the 10 Day Notice issued on January 4, 2012 within five days of being served with the 10 Day Notice. I find that the landlord's acceptance of \$215.00 for use and occupancy only after the landlord issued the 10 Day Notice did not continue this tenancy. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of being deemed served 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 this tenancy on January 17, 2012. As the tenants have not vacated the rental unit by that date, 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.

Based on the undisputed evidence of the landlord, I find that there remains \$200.00 in rent owing for January 2012. I issue a monetary award in the amount of \$200.00 for unpaid rent and \$50.00 to allow the landlord to recover the filing fee for the landlord's application from the tenants. In order to implement this total monetary award of \$250.00, I allow the landlord to retain this amount from the tenants' security deposit.

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 award in the landlord's favour in the amount of \$250.00, which allows the landlord to recover unpaid rent and the filing fee for this application from the tenants. To implement this monetary award, I allow the landlord to retain \$250.00 from the tenants' security deposit. I order that the retained amount of the tenants' security deposit now held by the landlord is now set at \$165.00 to reflect the monetary award issued in the landlord's favour.

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 26, 2012

Residential Tenancy Branch