



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD

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

The tenant did not attend this hearing, although I waited until 1:44 p.m. in order to enable him 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 testified that he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on January 3, 2012. The landlord testified that he sent the tenant a copy of his dispute resolution hearing package by registered mail on January 16, 2012. He provided the Canada Post Tracking Number to confirm this mailing. I am satisfied that the landlord served both of these sets of documents to the tenant 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 tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This fixed term tenancy commencing on September 1, 2011 is scheduled to end on February 29, 2012. Monthly rent is set at \$800.00, payable in advance on the first of each month. The landlord continues to hold a \$400.00 security deposit for this rental unit paid on January 1, 2011.

The landlord issued the 10 Day Notice for unpaid rent of \$800.00 owing on January 1, 2012 plus a \$25.00 late fee for late payment of rent that month. The landlord testified

that since issuing the 10 Day Notice, he has not received any further payments from the tenant. He applied for an Order of Possession and a monetary award of \$1,625.00 for unpaid rent owing since January 1, 2012.

Analysis

The tenant failed to pay the January 2012 rent 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 January 16, 2012. 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.

Based on the undisputed evidence, I find that the landlord is entitled to a monetary award of \$1,625.00 for unpaid rent of \$800.00 for each of January and February 2012, plus the landlord's claim for recovery of the \$25.00 late fee for late payment of rent for January 2012. I allow the landlord to retain the tenant's security deposit in partial satisfaction of this monetary award plus applicable interest. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover the filing fee for this application from the tenant.

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 find that the landlord is entitled to a monetary award in the following terms which allows the landlord to recover unpaid rent, a late fee, and his application filing fee and to retain the tenant's security deposit:

Item	Amount
Unpaid January 2012 Rent	\$800.00
January 2012 Late Fee	25.00
Unpaid February 2012 Rent	800.00
Less Security Deposit	-400.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,275.00

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: February 10, 2012

Residential Tenancy Branch