



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 and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities 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 3:20 p.m. in order to enable him 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 he posted the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on the tenant's door on January 23, 2012. The landlord testified that he sent a copy of his dispute resolution hearing package to the tenant by registered mail on February 10, 2012. He provided the Canada Post Tracking Number and evidence from the Canada Post Tracking service to confirm this mailing and his assertion that the tenant received this package. I am satisfied that the landlord served these documents in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent and utilities? Is the landlord entitled to a monetary award for unpaid rent and utilities? 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 from the tenant?

Background and Evidence

This one-year fixed term tenancy commenced on November 16, 2011. Monthly rent is set at \$775.00, payable in advance on the 16th of each month, plus \$125.00 for monthly utilities. The tenant is also responsible for a \$35.00 satellite television fee each month paid to the landlord.

The landlord currently retains the tenant's \$387.50 security deposit payment and his \$387.50 pet damage deposit payment, both paid on November 16, 2011. The landlord also continues to hold \$112.00 in deposits for the tenant's satellite receiver, remote and keys also paid on November 16, 2011.

The landlord applied for a monetary award of \$1,377.00, which included the following:

Item	Amount
Unpaid Rent & Utilities Owing January 16, 2012	\$942.00
Unpaid Rent & Utilities Owing February 16, 2012	935.00
Less Tenant's Payment February 3, 2012	-500.00
Total Monetary Award Requested	\$1,377.00

At the hearing, the landlord gave sworn testimony that he told the tenant when he paid the landlord \$500.00 on February 3, 2012 that his acceptance of this payment would not affect the landlord's ongoing attempt to end this tenancy and obtain an Order of Possession. At that time, the landlord said that the tenant told him that he was expecting to make further payments to continue his tenancy. The landlord testified that he has not received any further payments.

Analysis

The tenant failed to pay all of the \$942.00 identified as owing in the January 23, 2012 10 Day Notice within five days of receiving that Notice. Based on the evidence presented, I am satisfied that the landlord's acceptance of \$500.00 from the tenant on February 3, 2012 did not continue this tenancy. 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 February 6, 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 regarding the rental agreement for this tenancy, I find that the landlord is entitled to a monetary award of \$775.00 for unpaid rent, \$125.00 for unpaid utilities, and \$35.00 for satellite television for each of January and February

2012. I reduce the amount of this monetary award by the \$500.00 the landlord accepted from the tenant on February 3, 2012.

I allow the landlord to retain the tenant's pet damage, security, key, satellite and fob deposits plus applicable interest to partially offset the monetary award issued in this decision. No interest is payable over this period.

Since the landlord has been successful in this application, I allow him to recover his \$50.00 filing fee 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 issue a monetary award in the landlord's favour under the following terms which allows the landlord to recover unpaid rent and utilities as well as his filing fee for this application, and to retain all of the deposits he continues to retain that were paid by the tenant towards this tenancy:

Item	Amount
Unpaid Rent & Utilities Owing January 16, 2012	\$935.00
Unpaid Rent & Utilities Owing February 16, 2012	935.00
Less Tenant's Payment February 3, 2012	-500.00
Less all Deposits Paid by the Tenant (\$387.50 + \$387.50 + \$112.00 = \$867.00)	-867.00
Filing Fee	50.00
Total Monetary Order	\$553.00

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 28, 2012

Residential Tenancy Branch