



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

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; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant did not attend this hearing, although I waited until 3:21 p.m. in order to enable the tenant 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 sent the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by registered mail on February 7, 2012. He provided the Canada Post Tracking Number to confirm this mailing. He testified that he handed the tenant a copy of his dispute resolution hearing package on February 14, 2012. 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? Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

The landlord testified that this periodic tenancy commenced on September 1, 2011. He said that monthly rent was set at \$750.00, payable in advance on the first of each month. The landlord testified that he continues to hold the tenant's \$187.50 security deposit paid on or about September 7, 2012.

By the time of the hearing, the landlord had not provided any written evidence to support his application for an end to this tenancy and a monetary award of \$750.00. At the hearing, I advised him that I would consider his request for an end to this tenancy if he faxed a copy of his 10 Day Notice to the Residential Tenancy Branch by the following morning. He sent a copy of his 10 Day Notice by fax later on March 1, 2012.

He testified that the tenant had not paid one-half of the December 2011 rent, one-half of the January 2012 rent, and had not paid any rent for either February 2012 or March 2012. The landlord asked for an increase in the amount of his monetary award to reflect the increased rent that has not been paid since he issued his application for dispute resolution.

Analysis

Based on the landlord's undisputed evidence, I find that the tenant failed to pay all of the rent identified as owing 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 her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by February 22, 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 evidence presented, I allow the landlord a monetary award of \$750.00, the amount of the monetary award claimed in his application for dispute resolution. This monetary award is for unpaid rent owing from February 2012. The landlord did not amend his application for dispute resolution to include rent that he claimed at the hearing was owing from December 2011 and January 2012. It is uncertain if the tenant would have contested the landlord's claim if she had been notified that the landlord was seeking an amount in excess of the \$750.00 identified as owing in the 10 Day Notice and the landlord's application for dispute resolution received by the Residential Tenancy Branch on February 14, 2012. For these reasons and because the landlord's personal deposit account history faxed after this hearing does not provide a clear record of payments received from the tenant, I limit his monetary award to the \$750.00 he claimed in his application for dispute resolution.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the \$187.50 security deposit (plus applicable interest) he said he obtained for this tenancy in partial satisfaction of the monetary award. No interest is payable over this period.

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 following terms which allows the landlord to recover unpaid rent and to retain the tenant's security deposit in partial satisfaction of the award issued in this decision:

Item	Amount
Unpaid February 2012 Rent	\$750.00
Less Security Deposit	-187.50
Total Monetary Order	\$562.50

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: March 02, 2012

Residential Tenancy Branch