



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, 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 and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; 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 11:13 a.m. in order to enable the tenant to connect with this hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord's agent (the agent) entered into written evidence a signed statement attesting that at 4:30 p.m. on February 7, 2012, she posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door. The agent provided a copy of the Canada Post Tracking Number to support her claim that she sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on February 14, 2012. I am satisfied that the landlord has served the above 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 and losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy commenced as a one-year fixed term tenancy on February 1, 2003. When the initial term ended, the tenancy continued as a periodic tenancy. Monthly rent is currently set at \$895.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$410.00 security deposit paid on June 1, 2003.

The landlord's application for a monetary Order of \$2,795.00 included the following items:

Item	Amount
Balance of Rent Owing as of February 1, 2012	\$895.00
February 2012 Late Fees	20.00
Unpaid March 2012 Rent	895.00
March 2012 Late Fee	20.00
Loss of Rent April 2012	895.00
April 2012 Late Fee	20.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order Requested	\$2,795.00

At the hearing, the agent testified that the landlord accepted payments of \$940.00 on February 15, 2012 and \$895.00 on March 1, 2012 for "use and occupancy only." The agent testified that in addition to the fees identified in the above table the landlord also charged the tenant with a \$25.00 NSF cheque fee for February 2012. After reviewing the amounts identified as owing and the amounts accepted by the landlord for use and occupancy only, the landlord revised her application for a monetary award to \$20.00 for unpaid rent or losses arising out of this tenancy plus \$50.00 for the recovery of the landlord's filing fee.

Analysis

I find that there is undisputed evidence that the tenant failed to pay the \$1,315.00 amount identified as owing in the 10 Day Notice of February 7, 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 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 20, 2012. I find that the tenant's payments of \$940.00 and \$895.00, accepted by the landlord for use and occupancy only, did not continue this tenancy or set aside the landlord's 10 Day Notice. As that has not occurred, I find that the landlord is entitled to an Order of Possession effective March 31, 2012. I select this date for the Order of Possession because I find that the landlord's acceptance of the tenant's payment of \$895.00 on March 1, 2012 for use and occupancy only was clearly intended to cover the tenant's regularly scheduled rent payment for March 2012. I find that the landlord's acceptance of this payment conveyed the landlord's willingness to allow the tenant to continue to use and occupy the rental premises for the month of March 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 by 1:00 p.m. on March 31, 2012, the landlord may enforce this Order in the Supreme Court of British Columbia.

I accept the landlord's undisputed evidence that the landlord is entitled to a monetary award of \$20.00 for unpaid rent and losses arising out of this tenancy. As the landlord was successful in this application, I find that the landlord is also entitled to recover the \$50.00 filing fee paid for this application from the tenant.

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 \$70.00 from the tenant's security deposit in partial satisfaction of the monetary award issued in this decision. I find that the amount of the tenant's security deposit still held by the landlord is reduced by \$70.00 from \$410.00 to \$340.00 plus applicable interest.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective March 31, 2012. Should the tenant 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 \$70.00 monetary award in the landlord's favour which allows the landlord to recover unpaid rent and losses arising out of this tenancy and to recover the filing fee for this application. To implement this monetary award, I allow the landlord to retain \$70.00 from the tenant's security deposit. The retained value of the tenant's security deposit is reduced from \$410.00 to \$340.00 plus applicable interest.

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 08, 2012

Residential Tenancy Branch