



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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that he received the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted by the landlord on his door on March 2, 2012. The tenant also confirmed that he had signed a statement attesting to the landlord's hand delivery of her dispute resolution hearing package to him on March 14, 2012. I am satisfied that the landlord served these documents to the tenant in accordance with the *Act*.

At the hearing, the landlord revised the amount of her requested monetary award from \$1,300.00 to \$375.00. This amount included \$300.00 in outstanding rent after the tenant paid \$350.00 to the landlord on March 27, 2012, accepted by the landlord for "use and occupancy" only. It also included a \$25.00 late fee as set out in the tenancy agreement and recovery of the landlord's \$50.00 filing fee for this application. I revised the requested amount of the landlord's application for a monetary award accordingly.

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 from the tenant?

Background and Evidence

This tenancy began as a fixed term tenancy on December 13, 2009. When the initial term of the tenancy ended, the tenancy continued as a periodic tenancy. Monthly rent is now set at \$650.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$325.00 security deposit paid on December 10, 2009.

The landlord's 10 Day Notice identified \$650.00 in rent owing for March 2012, plus the \$25.00 late fee for that month. The landlord's original application for a monetary award of \$1,300.00 included unpaid rent for March 2012 and April 2012. The tenant agreed that he still owes \$300.00 of his March 2012 rent and the \$25.00 late fee.

Analysis

The tenant failed to pay all of the March 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 corrected effective date of the notice. In this case, this required the tenant to vacate the premises by March 15, 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 of the landlord, I find that the landlord is entitled to a monetary award of \$325.00 for unpaid rent and the late fee for March 2012. As the landlord has been successful in this application, she is entitled to recover her \$50.00 filing fee from the tenant.

I allow the landlord to retain the tenant's \$325.00 security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. 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. 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 monetary award in the landlord's favour under the following terms which allows the landlord to recover the unpaid rent and the filing fee and to retain the tenant's security deposit:

Item	Amount
Unpaid March 2012 Rent and Late Fee (\$300.00 + \$25.00 = \$325.00)	\$325.00
Less Security Deposit	-325.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$50.00

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: March 30, 2012

Residential Tenancy Branch