



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:14 a.m. in order to enable him to connect with this teleconference 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 testified that she posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door between 3:30 p.m. and 5:00 p.m. on February 6, 2012. She testified that she sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on May 25, 2012. She entered into written evidence a copy of the Canada Post Tracking Number and Customer Receipt to confirm this mailing. I find that the landlord served the above 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 recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy commenced on August 1, 2011. Monthly rent is set at \$1,100.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$550.00 security deposit paid on July 8, 2011.

The landlord's application for a monetary award of \$4,658.35 included requests for unpaid rent of \$258.35 for February 2012, and \$1,100.00 for each succeeding month from March 2012 until June 2012. She entered into written evidence a copy of the 10 Day Notice. She testified that the tenant has not paid anything towards his outstanding rent since February 2012.

Analysis

The tenant failed to pay all of the outstanding rent identified as owing in the 10 Day Notice within five days of receiving that 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 February 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 presented by the landlord, I find that the landlord is entitled to a monetary award for unpaid rent of \$258.35 for February 2012, and \$1,100.00 for each of the next four months.

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 security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

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 Order in the landlord's favour under the following terms which allows the landlord to recover unpaid rent and the filing fee for this application and to retain the tenant's security deposit:

Item	Amount
Outstanding Rent February 2012	\$258.35
Unpaid March 2012 Rent	1,100.00
Unpaid April 2012 Rent	1,100.00
Unpaid May 2012 Rent	1,100.00
Unpaid June 2012 Rent	1,100.00
Less Security Deposit	-550.00

Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$4,158.35

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: June 14, 2012

Residential Tenancy Branch