



Dispute Resolution Services

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

The tenant did not attend this hearing, although I waited until 3:13 p.m. in order to enable her to connect with this teleconference 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 provided a copy of the Canada Post Tracking Number to confirm that he sent the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by registered mail on May 17, 2012. The landlord also provided the Canada Post Tracking Number to confirm that he sent a copy of the dispute resolution hearing package to the tenant by registered mail on June 1, 2012. I am satisfied that the landlord served these 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 six-month fixed term tenancy commenced on April 1, 2012. Monthly rent is 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 April 2, 2012.

The landlord testified that the tenant has not paid anything further to her rent since receiving the 10 Day Notice. As per their residential tenancy agreement entered into evidence by the landlord, a \$25.00 N.S.F. fee is to be applied when the tenant issues an N.S.F. cheque. The landlord entered into written evidence a copy of the tenant ledger, noting that the landlord could not negotiate the tenant's May 2012 rent cheque. The

landlord applied for a monetary award of \$1,345.00 to reflect unpaid rent and fees owing regarding this tenancy.

Analysis

The tenant failed to pay the \$695.00 amount identified as owing in the 10 Day Notice in full 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 June 1, 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 provided by the landlord, I find that the landlord is entitled to a monetary award of \$1,300.00 for unpaid rent for May and June 2012, plus a monetary award of \$25.00 for the NSF fee as set out in the residential tenancy agreement for this tenancy. Although the landlord's application does not seek to retain the 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. I allow the landlord to recover the filing fee for this application 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 Order in the landlord's favour under the following terms which allows the landlord to recover unpaid rent, losses and the filing fee for this application and to retain the tenant's security deposit:

Item	Amount
Unpaid May 2012 Rent	\$650.00
May NSF Fee	25.00
Unpaid June 2012 Rent	650.00
Less Security Deposit	-325.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$1,050.00

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: June 21, 2012

Residential Tenancy Branch