



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, O

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 1:54 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 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's counsel testified that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was sent to the tenant by registered mail on June 12, 2012. The landlord's counsel entered written evidence confirming the Canada Post Tracking Number and Customer Receipt for this mailing, as well as a Proof of Service Document to this effect. Landlord's counsel JW gave sworn testimony that he handed a copy of the landlord's dispute resolution hearing package to the tenant's adult daughter on July 10, 2012, the same date that a copy of that package was sent to the tenant by registered mail. Landlord's counsel JW provided the Canada Post Tracking Number to confirm this mailing. I am satisfied that the above documents were served 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 October 1, 2009. Monthly rent is set at \$1,600.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$800.00 security deposit paid on September 22, 2009.

The landlord's application for a monetary award of \$16,997.36 included the following:

Item	Amount
Strata Penalty/Fines Levied due to Tenant's Actions	2,597.36
Total Monetary Award Requested	\$16.997.36

The landlord also requested the recovery of the \$100.00 filing fee for this application.

At the hearing, both of the landlord's counsel confirmed that no payments have been made by the tenant since the 10 Day Notice was issued. They asked for authorization to amend the landlord's application for a monetary award by adding unpaid rent of \$4,800.00 for May, June and July 2012 to the landlord's original application. Under the circumstances, I allowed the landlord's request to amend the application to reflect the unpaid rent that has arisen since the 10 Day Notice was issued. This raised the landlord's requested monetary award to \$21,797.36.

Analysis

The tenant failed to pay the full amount of unpaid rent identified as owing on the 10 Day notice 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 this tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by June 30, 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 before me, I find that the landlord is entitled to a monetary award of 12 months unpaid rent for the period claimed by the landlord. This results in a monetary award of \$19,200.00 for unpaid rent.

I find that the landlord and his counsel have submitted inadequate evidence to support the landlord's claim that he has suffered losses arising out of strata fines and penalties applied by the strata corporation for this property. They supplied no written evidence to substantiate these claimed losses. I dismiss this element of the landlord's application without leave to reapply.

As the landlord has been successful for the most part in this application, I allow him to recover his filing fee 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 the tenant's security deposit plus applicable interest 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. 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 Order in the landlord's favour under the following terms which allows the landlord to recover 12 months of unpaid rent and the filing fee for his application and to retain the tenant's security deposit:

Item	Amount
12 Months Rent @ \$1,600.00 (12 x \$1,600.00 = \$19,200.00)	\$19,200.00
Less Security Deposit	-800.00
Recovery of Filing Fee for this application	100.00
Total Monetary Order	\$18,500.00

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: July 30, 2012

Residential Tenancy Branch