



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

The tenant did not attend this hearing, although I waited until 9:45 a.m. in order to enable her to connect with this teleconference hearing scheduled for 9:30 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 submitted a witnessed Proof of Service document in which she stated that she posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door at 8:30 a.m. on July 6, 2012. She also gave sworn testimony to confirm this service of the 10 Day Notice. The landlord testified that she sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on July 16, 2012. She provided the Canada Post Tracking Number to confirm this mailing. Although she does not believe the tenant has picked up this registered mail, she testified that the tenant spoke with her the day before this hearing and the landlord also sent details on how to connect with this hearing to the tenant by text message the night before this hearing. I am satisfied that the landlord 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? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This fixed term tenancy that commenced on March 15, 2012 is scheduled to end on March 31, 2013. Monthly rent is set at \$1,175.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$587.50 security deposit paid on March 11, 2012.

The landlord issued the 10 Day Notice for unpaid rent of \$1,175.00 for July 2012. Although the tenant has made some payments, accepted by the landlord for use and occupancy only, \$1,452.50 was owing as of the July 17, 2012 date of the landlord's application for dispute resolution. Subsequent to the landlord's application, additional payments have been made by the tenant, but the tenant's August 2012 rent cheque was returned as N.S.F. The landlord requested an amended monetary award at the hearing, an amount that reflects the current amount of unpaid rent as set out below:

Item	Amount
Unpaid Rent Owing as of April 2012	\$227.50
Unpaid Rent July 2012	1,175.00
N.S.F. and Late Fee - July 2012	50.00
Less Tenant's July 31, 2012 Payment	-1,000.00
Unpaid Rent August 2012	1,175.00
N.S.F. and Late Fee - August 2012	50.00
Less Tenant's August 7, 2012 Payment	-190.00
Less Tenant's August 8, 2012 Payment	-100.00
Less Tenant's August 9, 2012 Payment	-115.00
Total of Above Items	\$1,272.50

The landlord also requested the recovery of the \$50.00 filing fee from the tenant.

Analysis

I accept the landlord's evidence that recent payments have not reinstated this tenancy. The tenant failed to pay the amount 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 her tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by July 19, 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 oral and written evidence submitted by the landlord, I find that the landlord is entitled to a monetary award of \$1,272.50 for unpaid rent, late fees and N.S.F. cheque fees applied against this tenancy as of the date of this hearing.

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. I also allow the landlord to recover the filing fee 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 in the following terms which allows the landlord to recover unpaid rent and rent associated fees, and the filing fee for this application, and to retain the tenant's security deposit:

Item	Amount
Unpaid Rent Owing as of April 2012	\$227.50
Unpaid Rent July 2012	1,175.00
N.S.F. and Late Fee - July 2012	50.00
Less Tenant's July 31, 2012 Payment	-1,000.00
Unpaid Rent August 2012	1,175.00
N.S.F. and Late Fee - August 2012	50.00
Less Tenant's August 7, 2012 Payment	-190.00
Less Tenant's August 8, 2012 Payment	-100.00
Less Tenant's August 9, 2012 Payment	-115.00
Less Security Deposit	-587.50
Filing Fee	50.00
Total Monetary Order	\$735.00

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: August 10, 2012

Residential Tenancy Branch