



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC

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; and
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

The tenant did not attend this hearing, although I waited until 3:14 p.m. in order to enable the tenant 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 gave sworn testimony and written evidence that he handed the tenant the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on July 2, 2012 at approximately 4:55 p.m. The landlord's written evidence provided a signed statement from an individual who witnessed the landlord hand this document to the tenant. The landlord testified that he handed the tenant a copy of his dispute resolution hearing package at 4:40 p.m. on August 9, 2012. His wife, the witness at this hearing, gave sworn testimony that the landlord served the hearing package to the tenant in this manner on August 9, 2012. I am satisfied that the landlord served these documents to the tenant in accordance with the *Act*.

At the hearing the landlord's agent (the agent) testified that the tenant has not paid any portion of the rent identified as owing in the 10 Day Notice or since that time. The agent asked to amend the requested amount of the monetary award for unpaid rent from \$1,100.00 for two month's unpaid rent to \$1,650.00 for three month's unpaid rent, including that owing for September 2012. I agreed to the agent's requested amendment of the amount of the monetary award to reflect this development.

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 and losses arising out of this tenancy?

Background and Evidence

This fixed term tenancy commenced on August 1, 2011. Monthly rent is set at \$550.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$275.00 security deposit paid on August 1, 2011. As noted above, the landlord's amended application for a monetary award is for \$1,650.00 in outstanding rent. The landlord also asked for an Order of Possession.

Analysis

The tenant failed to pay the July 2012 rent 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 his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by July 12, 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 am satisfied that the landlord is entitled to a monetary award of \$550.00 for each of the three months of rent that remains outstanding at this time (i.e., July 2012, August 2012 and September 2012). 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.

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 for this tenancy and to retain the tenant's security deposit:

Item	Amount
Unpaid July 2012 Rent	\$550.00
Unpaid August 2012 Rent	550.00
Unpaid September 2012 Rent	550.00
Less Security Deposit	-275.00
Total Monetary Order	\$1,375.00

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: September 05, 2012

Residential Tenancy Branch