



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; 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 her 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's male representative testified that he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on August 2, 2012. The landlord's female representative (the landlord) testified that she sent a copy of the landlord's dispute resolution hearing package to the tenant by registered mail on August 14, 2012. She entered into written evidence a copy of the Canada Post Tracking Number to confirm this mailing. She testified that the package was returned to the landlord as undelivered on September 10, 2012. In accordance with section 90 of the *Act*, the hearing package was deemed to have been served to the tenant on the fifth day after its mailing, August 19, 2012. I am satisfied that the above documents were served to the tenant in accordance with the *Act*.

At the commencement of the hearing, the landlord testified that the tenant has not made any further payments since receiving the 10 Day Notice. She asked for authorization to amend the amount of her requested monetary award from \$1,600.00 to \$2,400.00 to reflect the tenant's failure to pay rent for September 2012, in addition to the previous two months included in the landlord's application. Under the circumstances, I allowed the landlord's request to amend the amount of the requested monetary award to \$2,400.00, plus the recovery of the \$50.00 filing fee.

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 retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This one-year fixed term tenancy commenced on April 1, 2012. Monthly rent is set at \$800.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$400.00 security deposit paid on March 16, 2012.

The landlord's amended application for a monetary award of \$2,400.00 included a request for unpaid rent of \$800.00 for each of July, August and September 2012.

Analysis

The tenant failed to pay the \$1,600.00 in 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 August 15, 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 landlord's undisputed evidence, I find that the landlord is entitled to a monetary award of \$2,400.00 for rent owing from July, August and September 2012.

I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of this monetary award. No interest is payable over this period. As the landlord has been successful in this application, the landlord is entitled 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 under the following terms which allows the landlord to recover unpaid rent and the filing fee for this application from the tenant and to retain the tenant's security deposit:

Item	Amount
Unpaid July 2012 Rent	\$800.00
Unpaid August 2012 Rent	800.00
Unpaid September 2012 Rent	800.00
Less Security Deposit	-400.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$2,050.00

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: September 13, 2012

Residential Tenancy Branch