



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNSD, MNDC, 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, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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 9:43 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's female representative (the landlord) confirmed that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted on the tenant's door by one of the landlord's representatives on August 9, 2012. The landlord submitted into written evidence a copy of a witnessed Proof of Service document attesting to the posting of the 10 Day Notice on the tenant's door at 4:00 p.m. on August 9, 2012. The landlord testified that a copy of the landlord's dispute resolution hearing package was sent to the tenant by registered mail on August 22, 2012. She provided the Canada Post Tracking Number and testified that this package was returned to the landlord as unclaimed on September 12, 2012. I am satisfied that the landlord served the above documents to the tenant in accordance with the *Act*.

At the commencement of the hearing, the landlord said that she is uncertain as to whether the tenant has vacated the rental unit. She requested the issuance of an Order of Possession on the basis of the 10 Day Notice. She also requested a revision in the amount of the monetary award sought to reflect the tenant's payment of \$650.00 on August 22, 2012, but failure to pay anything towards her September 2012 rent or parking. As this was also noted in the Details of the Dispute in the landlord's application for dispute resolution, I agreed to this request to modify the amount of the monetary

award sought by the landlord. The revised amount of the monetary award requested changes from \$1,040.00 to \$1,480.00 (including the recovery of the 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 and losses arising out of this tenancy? 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 commencing on September 16, 2011 was scheduled to end on September 30, 2012. Monthly rent is set at \$995.00, payable in advance on the first of each month, plus a \$20.00 parking fee. The landlord continues to hold the tenant's \$497.50 security deposit paid on September 15, 2011.

The landlord's original application for a monetary award of \$1,040.00 was comprised of \$995.00 for unpaid rent owing from August 2012, \$20.00 for unpaid parking for that month and a \$25.00 late fee for that month. The landlord testified that the \$650.00 on-line payment received on August 22, 2012 has been the only payment received from the tenant since the landlord's issuance of the 10 Day Notice. The landlord's request for an amended monetary award was for similar unpaid amounts owing for September 2012 (i.e., unpaid rent, parking and a late fee).

Analysis

The tenant failed to pay the August 2012 rent identified as owing on 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 August 22, 2012. As that may not have 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 evidence before me, I find that the landlord is entitled to a monetary award for unpaid rent, parking and late fees for both August and September 2012, less the \$650.00 payment received from the tenant on August 22, 2012. Although the landlord also requested the recovery of a June 2012 late fee for this tenancy, the

landlord has not provided sufficient evidence to demonstrate entitlement to a monetary award for this item. I dismiss the landlord's request for the recovery of the June 2012 late fee without leave to reapply. I allow the landlord to retain the tenant's security deposit plus applicable interest and to recover the filing from the tenant. 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 and losses arising out of this tenancy and the filing fee for this application and to retain the tenant's security deposit:

Item	Amount
August 2012 Rent Owing less partial payment of August 22, 2012 (\$995.00 - \$650.00 = \$345.00)	\$345.00
Parking Fee August 2012	20.00
Late Fee August 2012	25.00
Unpaid September 2012 Rent	995.00
Parking Fee September 2012	20.00
Late Fee September 2012	25.00
Less Security Deposit	-497.50
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$982.50

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 26, 2012

Residential Tenancy Branch