



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, 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 and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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 3: 14 p.m. in order to enable him 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 entered written evidence that the tenant gave his written confirmation that the landlord handed him a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) at 6:00 p.m. on August 4, 2012. The landlord also entered written evidence that the tenant confirmed that the landlord handed him a copy of the landlord's dispute resolution hearing package at 11:30 a.m. on August 24, 2012. I am satisfied that the landlord served the above documents 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 and losses arising out of this tenancy? 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 15, 2012. Monthly rent is set at \$720.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$360.00 security deposit paid on April 18, 2012.

At the hearing, the landlord's representative HC (the landlord) revised the amount of the monetary award sought in this application from \$1,809.00 to \$319.00, an amount which included the recovery of the landlord's \$50.00 filing fee for this application. She also

stated that the correct amount of rent that was owing on August 4, 2012 was \$329.00 and not \$390.00 as was incorrectly noted on the 10 Day Notice. The landlord testified that the only payment received from the tenant since the 10 Day Notice was issued was a \$800.00 payment on August 31, 2012, received by the landlord for use and occupancy only.

Analysis

The tenant failed to pay all of the amount identified as owing on the 10 Day Notice within five days of receiving that Notice. I find that the landlord's acceptance of the August 31, 2012 payment for use and occupancy only did not reinstate this tenancy nor does it disentitle the landlord from pursuing an Order of Possession on the basis of 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 August 14, 2012. As that has not occurred and the portion of the \$800.00 payment of August 31, 2012 accepted for use and occupancy only does not entitle the tenant to remain in the rental unit beyond September 20, 2012, 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 accept that the landlord is entitled to a monetary award for unpaid rent owing as of August 4, 2012 of \$329.00. The tenant's \$800.00 payment of August 31, 2012 is applied to this outstanding rent, the \$720.00 that became due on September 1, 2012, plus a late fee of \$20.00 for rent owing as of September 1, 2012. This results in a monetary award in the landlord's favour of \$269.00 for unpaid rent plus the recovery of the landlord's \$50.00 filing fee which I also allow.

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 in satisfaction of the monetary award issued in this decision.

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 award in the landlord's favour in the amount of \$319.00 which allows the landlord to recover unpaid rent, a late fee and the landlord's filing fee for this application. In order to implement this monetary award, I order the landlord to retain \$319.00 from the tenant's security deposit. I therefore order that the value of the tenant's security deposit currently retained by the landlord is reduced from \$360.00 to \$41.00.

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 26, 2012

Residential Tenancy Branch