



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, 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 tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:11 a.m. in order to enable them 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. Landlord CW (the landlord) testified that she posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenants' door at 12:00 p.m. on September 2, 2012. She entered into written evidence a Proof of Service document in which she attested to serving the 10 Day Notice to the tenants in the above fashion. The landlord testified that she sent both tenants a copy of the landlord's dispute resolution hearing package by registered mail on September 24, 2012. She provided the Canada Post Tracking Numbers to confirm these mailings. I am satisfied that the landlord served the above documents to the tenants 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 or for loss of rent? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began as a one-year fixed term tenancy on December 1, 2008. At the expiration of the initial term, the tenancy converted to a periodic tenancy. Monthly rent is currently set at \$950.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$475.00 security deposit paid on November 25, 2008. The landlord's application for a monetary award of \$2,870.99 included the following:

Item	Amount
Unpaid Portion of September 2012 Rent (\$910.99 + \$20.00 = \$930.99)	\$930.99
Unpaid October 2012 Rent + Late Fee (\$950.00 + \$20.00 = \$970.00)	970.00
Loss of Rent November 2012 + Late Fee (\$950.00 + \$20.00 = \$970.00)	970.00
Total Monetary Award Requested	\$2,870.99

Landlord NS testified that the tenants had a \$39.01 credit by the end of August but have not paid anything towards their rent for this tenancy since receiving the landlord's 10 Day Notice.

Analysis

The tenants failed to pay the amount identified as owing in the 10 Day Notice in full within five days of receiving the 10 Day Notice. The tenants have 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 tenants' failure to take either of these actions within five days led to the end of this tenancy on the corrected effective date of the notice. In this case, this required the tenants to vacate the premises by September 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(s). If the tenants do 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 of the landlords' two representatives, I find that the landlord is entitled to a monetary award for unpaid rent and late fees as claimed for September and October 2012. As there is no way of forecasting at this point whether the landlord will experience losses in rent for November 2012 arising out of this tenancy, I dismiss the landlord's claim for a monetary award for anticipated loss of rent for November 2012 with leave to reapply.

Although the landlord's application does not seek to retain the tenants' security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit for this tenancy plus applicable interest in partial satisfaction of the monetary award. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

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 and to retain the tenants' security deposit:

Item	Amount
Unpaid Portion of September 2012 Rent (\$910.99 + \$20.00 = \$930.99)	\$930.99
Unpaid October 2012 Rent & Late Fee (\$950.00 + \$20.00 = \$970.00)	970.00
Less Security Deposit (\$475.00 + \$0.60 = \$475.60)	-475.60
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,475.39

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) 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.

The landlord's application for a monetary award for loss of rent for November 2012 is dismissed with leave to reapply.

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: October 24, 2012

Residential Tenancy Branch