



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with the landlord's amended 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 pursuant to section 67.

The tenant did not attend this hearing, although I waited until 9:51 a.m. in order to enable the tenant 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 building manager testified that she posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on October 2, 2012. The landlord's original application for dispute resolution requested only an Order of Possession for unpaid rent and the recovery of the landlord's \$50.00 filing fee from the tenant. The building manager testified that she handed the tenant a copy of this application as part of the landlord's original dispute resolution hearing package at 10:30 a.m. on October 19, 2012. The landlord's building manager also testified that she handed the tenant a copy of the landlord's amended application for dispute resolution on November 13, 2012 at or about 2:40 p.m. The landlord's amended application for dispute resolution sought a monetary Order for unpaid rent in the amount of \$1,770.00. In the Details of the Dispute section of the amended application, the landlord noted that the tenant had not paid October or November 2012 rent. Although there was no indication in the amended application that the landlord was seeking a recovery of the filing fee, in the Nature of the Dispute section of the on-line form completed by the landlord, the landlord noted that the landlord was seeking an end to the tenancy and an Order of Possession. I am satisfied that the landlord served the above documents and the landlord's written evidence package 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?

Background and Evidence

This periodic tenancy commenced on October 1, 2011. Monthly rent was originally set at \$860.00, payable in advance on the first of each month. As of October 1, 2012, the monthly rent increased to \$885.00. The landlord continues to hold the tenant's \$430.00 security deposit paid on September 26, 2011.

The amended application for dispute resolution takes the place of the original application for dispute resolution. I am satisfied that the tenant was aware from the landlord's amended application that the landlord was seeking a monetary award of \$1,770.00 for unpaid rent for October and November 2012, as well as an Order of Possession for unpaid rent.

Analysis

The tenant failed to pay the October 2012 rent in full within five days of being deemed to have received 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 her tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by October 15, 2012. As that has not occurred, I find that the landlord is entitled to a 7 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 7 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 \$1,770.00 for unpaid rent for October and November 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 tenant's 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 7 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 to retain the tenant's security deposit:

Item	Amount
Unpaid October 2012 Rent	\$885.00
Unpaid November 2012 Rent	885.00
Less Security Deposit	-430.00
Total Monetary Order	\$1,340.00

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: November 21, 2012

Residential Tenancy Branch

