



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPC, MNR, MNSD, FF
Tenant; CNR

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession for repeatedly late rent payments, a monetary order for unpaid rent, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notice to End Tenancy.

Service of the hearing documents by the Landlord to the Tenant was done by registered mail on January 4, 2013 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord was done by registered mail on December 12, 2012 in accordance with section 89 of the Act.

The Tenant did not attend the hearing. Consequently I dismiss the Tenant's application without leave to reapply.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and late fees and if so how much?
4. Is the Landlord entitled to retain the Tenant's security deposit?

Background and Evidence

This tenancy started on July 1, 2012 as a month to month tenancy. Market rent is \$510.00, but the Tenant qualified for a rent subsidy reducing the rent to \$320.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$205.00 in advance of the tenancy.

The Landlord said that the Tenant has been late with the rent payments 4 months in the last 7 months therefore the Landlord issued a 1 Month Notice to End Tenancy for cause on December 19, 2012 by registered mail. The Notice to End Tenancy is dated December 19, 2012 with an effective vacancy date of January 31, 2013. The Landlord provided rent receipts that showed the rent had been paid late in the months of August, November and December of 2012 and for January, 2013. The Landlord requested an Order of Possession for the effective vacancy date of January 31, 2013.

The Landlord continued to say he is also requesting the unpaid rent for January, 2013 of \$320.00, a late fee of \$20.00 and to retain the Tenant's security deposit of \$205.00 as partial payment of the January, 2013 rent arrears.

The Landlord also said he is seeking to recover the \$50.00 filing fee for this proceeding.

The Landlord concluded by saying his total claim is for \$320.00 in unpaid rent, \$20.00 in late fees and the \$50.00 filing fee for a total claim of \$390.00.

Analysis

Section 26 (1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Policy guideline #38 says the Act provides that a landlord may end a tenancy where the tenant is repeatedly late paying the rent and three late payments are the minimum number sufficient to justify a notice under these provisions.

I find that the Tenant has not paid the overdue rent and the Tenant has been repeatedly late with the rent payments. The Tenant does not have the right to withhold a part or all of the unpaid rent and is responsible to pay the rent on the day it is due. The Tenant's application to dispute the Notice to End Tenancy has been dismissed without leave to

reapply, because the Tenant did not appear to support the application. Consequently, I find for the Landlord and award the Landlord an Order of Possession and a Monetary Order for unpaid rent and late fees.

I find pursuant to s. 55 of the Act that the Landlord is entitled to an Order of Possession to take effect at 1:00 p.m. on January 31, 2013.

I also find that the Landlord is entitled to recover unpaid rent for the month of January, 2013 in the amount of \$320.00 and to be paid the \$20.00 late fee for January, 2013.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit as partial payment of the January, 2013 unpaid rent. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$320.00	
	Late fees	\$ 20.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$390.00
Less	Security deposit	\$205.00	
	Subtotal		\$205.00
	Balance Owing		\$185.00

Conclusion

An Order of Possession effective as of 1:00 p.m. on January 31, 2013 and a Monetary Order in the amount of \$185.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenants' application is dismissed without 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: January 15, 2013

Residential Tenancy Branch

