



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlords' 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 pursuant to section 67;
- authorization to retain 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that the male landlord (the landlord) handed him a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on December 26, 2012. The tenant also confirmed that he received a copy of the landlords' dispute resolution hearing package sent by the landlords by registered mail on January 2, 2013. I am satisfied that the landlords served the above documents and their written evidence package to the tenant in accordance with the *Act*.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Are the landlords entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord gave undisputed testimony that this tenancy commenced as a one-year fixed term tenancy on October 30, 2010, although the tenancy was not scheduled to begin until November 1, 2010. At the expiration of the initial term, the tenancy converted to a periodic tenancy. Current monthly rent is set at \$2,398.00, payable in advance by the first of each month. The landlords continue to hold the tenant's \$1,150.00 security deposit paid on October 30, 2010.

At the hearing, the landlord reduced the amount of the requested monetary award from \$7,294.00 for unpaid rent for three full months from November 2012 until January 2013 to \$5,894.00. He did so as the parties agreed that the tenant paid \$1,400.00 to the landlord on January 4, 2013. At the hearing, the tenant testified that he is planning to vacate the rental unit on January 31, 2013.

Analysis

The tenant failed to pay the \$4,796.00 identified as owing in the 10 Day Notice in full within five days of receiving the 10 Day Notice. I do not find that the tenant's January 4, 2013 payment continued this tenancy and based on the tenant's sworn testimony that he is ending his tenancy on January 31, 2013, the tenant realizes that this tenancy is ending shortly. 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 January 5, 2013. As that has not occurred, I find that the landlord is entitled to an Order of Possession to take effect by 1:00 p.m. on January 31, 2013. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by that time and date, the landlords may enforce this Order in the Supreme Court of British Columbia.

Based on the undisputed evidence before me, I find that the landlords are entitled to a monetary award for the recovery of rent for November 2012, December 2012 and January 2013, less the tenant's \$1,400.00 payment of January 4, 2013.

I allow the landlords to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. The landlords are also entitled to recover their \$100.00 filing fee for their application from the tenant.

Conclusion

The landlords are provided with a formal copy of an Order of Possession effective by 1:00 p.m. on January 31, 2013. 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 landlords' favour under the following terms, which allows the landlords to recover unpaid rent and their filing fee and to retain the tenant's security deposit:

Item	Amount
Unpaid November 2012 Rent	\$2,398.00
Unpaid December 2012 Rent	2,398.00
Unpaid January 2013 Rent	2,398.00
Less Tenant's January 4, 2013 Payment	-1,400.00
Less Security Deposit	-1,150.00
Recovery of Filing Fee for this application	100.00
Total Monetary Order	\$4,744.00

The landlord is provided with these Orders in the above terms and the tenant must be served with an **Original Order** 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: January 28, 2013

Residential Tenancy Branch

