



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prudential Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

This hearing concerns the landlord's application for an order of possession / a monetary order as compensation for unpaid rent / retention of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy began on September 1, 2001. Presently, the monthly rent is \$777.00. Rent is due and payable in advance on the first day of each month, and a security deposit of \$340.00 was collected.

Arising from rent of \$777.00 which remained unpaid when due on January 1, 2013, the landlord issued a 10 day notice to end tenancy for unpaid rent dated January 7, 2013. Subsequently, on or about January 16, 2013 the tenant made payment in the limited amount of \$300.00. Thereafter, on February 1, 2013, the tenant paid the full amount of rental arrears for January 2013, in addition to the full amount of rent due on February 1, 2013. The tenant currently still resides in the unit, and the landlord's agents confirmed that the landlord continues to seek an order of possession.

During the hearing the parties described their hope to reach an agreement, pursuant to which the tenant will vacate the unit by no later than March 31, 2013, in exchange for full payment of rent for March before the end of February 2013.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated January 7, 2013. While the tenant has now paid all rent due for January and February, he did not pay all overdue rent for January within 5 days of receiving the notice, and he did not apply to dispute the notice. The tenant is therefore conclusively presumed under section 45(6) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord has established entitlement to an **order of possession**.

In regard to compensation, as rent has presently been paid in full to the end of February 2013, I find that the landlord has established entitlement limited to recovery of the **\$50.00** filing fee. I order that the landlord retain this amount from the security deposit. The parties are encouraged to settle between them the disposition of the balance of the security deposit at such time as the tenancy ends. In this regard, the attention of the parties is drawn to section 38 of the Act which speaks to **Return of security deposit and pet damage deposit**.

Conclusion

I order the landlord to withhold **\$50.00** from the security deposit to recover the filing fee.

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order 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: February 26, 2013

Residential Tenancy Branch

