



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Westsea Construction
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, 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 pursuant to section 67;
- authorization to retain all or a portion of 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.

The tenant did not attend this hearing, although I waited until 11:14 a.m. in order to enable him 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. The landlord testified that he posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on January 9, 2013. He also testified that he handed the tenant a copy of the landlord's dispute resolution hearing package at 5:20 p.m. on January 31, 2013. I am satisfied that the landlord served the above documents 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? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began as a 5 ½ month fixed term tenancy on March 15, 2011. At the expiration of the original fixed term, the tenancy converted to a periodic tenancy. Monthly rent is currently set at \$525.00, payable in advance on the first of each month.

The landlord continues to hold the tenant's \$282.50 security deposit paid on March 15, 2011.

The landlord's original application for a monetary award of \$1,139.01 included requests for unpaid rent of \$9.01 outstanding from before December 1, 2012, \$565.00 for December 2012, and \$565.00 for January 2013, plus recovery of the \$50.00 filing fee for this application. The landlord requested authorization to amend the original application by a further \$565.00, to reflect the tenant's failure to pay monthly rent for February 2013. I agreed to amend the application accordingly to a revised requested monetary award of \$1,704.01, plus the filing fee.

Analysis

The tenant failed to pay the \$1,139.01 in outstanding rent identified in the 10 Day Notice in full within five days of receiving that 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 his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by January 19, 2013. 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. If the tenant does 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 presented by the landlord, I find that the landlord is entitled to a monetary award of \$565.00 for each of December 2012, January 2013 and February 2013, plus \$9.01 owing prior to December 1, 2012. I allow the landlord 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. As the landlord has been successful in this application, I allow the landlord to recover the filing fee for the application from the tenant.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. 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 and to retain the tenant's security deposit:

Item	Amount
Unpaid Rent Owing Prior to December 1, 2012	\$9.01
Unpaid December 2012 Rent	565.00
Unpaid January 2013 Rent	565.00
Unpaid February 2013 Rent	565.00
Less Security Deposit	-282.50
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,471.51

The landlord is provided with these Orders in the above terms and the tenant must be served with this 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: February 27, 2013

Residential Tenancy Branch

