



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; 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 3:10 p.m. in order to enable him to connect with this teleconference hearing scheduled for 3:00 p.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 she posted a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on the tenant's door at 2:15 p.m. on November 7, 2012. She testified that she sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on January 4, 2013. She entered into written evidence a copy of the Canada Post Tracking Number and Customer Receipt. I am satisfied that the above documents were served to the tenant in accordance with the *Act*.

Although the landlord testified that she attached a copy of the 1 Month Notice to her application for dispute resolution, I advised the landlord that this copy was not part of the materials that had been provided to me before this hearing. I gave the landlord until the end of the day of this hearing to fax this Notice to me in order to consider her request for an end to this tenancy on the basis of the 1 Month Notice. The Residential Tenancy Branch (RTB) received another copy of the 1 Month Notice from the landlord by fax within 20 minutes of the completion of this hearing.

At the hearing, the landlord testified that she had received a \$1,200.00 payment from the tenant on January 17, 2013. She said that she accepted this payment for "use and occupancy only." She reduced the amount of her requested monetary award from \$1,472.50 to \$560.00. I agreed to reduce the amount of her requested monetary award accordingly.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy commenced as a one-year fixed term tenancy on June 1, 2010. At the end of the initial term, this tenancy converted to a periodic tenancy. Monthly rent is currently \$675.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$337.50 security deposit paid on June 1, 2010.

The landlord's 1 Month Notice indicated that the landlord's reason for issuing that Notice was as a result of the tenant's repeated late payment of rent. The landlord entered oral and written evidence, the latter in the form of a Tenant Ledger, outlining the tenant's rent payments.

Analysis

Based on the landlord's undisputed evidence, I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. I find that there is a long-standing pattern of late payment of rent for this tenancy. With one exception, the tenant has been late in paying his rent every month since April 2012. The tenant has not made application pursuant to section 47(4) of the *Act* within ten days of being deemed to have received the 1 Month Notice. In accordance with section 47(5) of the *Act*, the tenant's failure to take this action within ten 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 December 31, 2012. 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, an original of 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 evidence before me, I find that the landlord is entitled to a monetary award of \$560.00 for unpaid rent owing for this tenancy as of the date of this hearing.

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 security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

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

Item	Amount
Rent Owing as of January 30, 2013	\$560.00
Less Security Deposit	-337.50
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$272.50

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 31, 2013

Residential Tenancy Branch

