



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Porte Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OP, MNR, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's application for an order of possession / a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. The landlord's agent attended and gave affirmed testimony.

Despite service of the application for dispute resolution and notice of hearing (the "hearing package") by registered mail, the tenant did not appear. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail.

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 July 1, 2008. Monthly rent of \$1,060.00 and monthly parking of \$25.00 are both due and payable in advance on the first day of each month. A security deposit of \$510.00 was collected on May 21, 2008. A move-in condition inspection report was completed near the start of tenancy.

By letter dated January 30, 2013, the tenant gave notice to end tenancy effective "between Feb 1 – 5th/2013." Subsequently, the tenant did not dispute the landlord's advice that notice given before the end of January would be effective February 28, 2013. The tenant paid rent in full for February, however, she has not paid rent for March and she continues to reside in the unit. As a result of these circumstances, the landlord has been unable to make the unit available for any new renters who have made inquiries as a result of the landlord's advertising.

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

Section 45 of the Act speaks to **Tenant's notice**, in part as follows:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 55 of the Act addresses **Order of possession for the landlord**, and provides in part:

55(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(a) a notice to end the tenancy has been given by the tenant;

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord's agent, I find that in January 2013 the tenant gave notice to end tenancy effective February 28, 2013. However, despite this, the tenant has not vacated the unit. Accordingly, I find that the landlord has established entitlement to an **order of possession**.

I further find that as a result of the tenant's decision to retain possession of the unit beyond the effective date of the notice on February 28, 2013 ("over-holding"), even while she has not paid rent or parking for March, the landlord has established entitlement to a claim of **\$1,160.00**, as follows:

\$1,060.00: *unpaid rent for March*

\$25.00: *fee assessed for late payment of rent*

\$25.00: *parking for March*

\$50.00: *filing fee*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**, in part:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Following from all the above, I order that the landlord retain the security deposit of \$510.00, plus interest of \$4.56 [total: **\$514.56**], and I grant the landlord a **monetary order** for the balance owed of **\$645.44** (\$1,160.00 - \$514.56).

Conclusion

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.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$645.44**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court 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: March 27, 2013

Residential Tenancy Branch

