



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wendeb Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, 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 unpaid rent 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 3:12 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 the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on January 17, 2012 at 10:14 a.m. She submitted into written evidence a signed Proof of Service document attesting to her posting of the 10 Day Notice, witnessed by the landlord's assistant manager. The landlord testified that she sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on February 8, 2013. She provided the Canada Post Tracking Number to confirm this registered mailing. She testified that Canada Post's on-line tracking system reveals that the registered mail was successfully delivered to the tenant on February 11, 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 recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that this tenancy is now a periodic tenancy with the monthly rent set at \$775.00, prior to December 1, 2012, and \$600.00 as of December 1, 2012. She

said that the tenancy began on December 1, 1998. The landlord continues to hold a \$280.00 security deposit paid on or about November 24, 1998.

The landlord's application for a monetary award of \$2,800.00 included the following:

Item	Amount
Unpaid November 2012 Rent	\$425.00
Unpaid December 2012 Rent	775.00
Unpaid January 2013 Rent	800.00
Unpaid February 2013 Rent	800.00
Total Monetary Order Requested	\$2,800.00

She testified that the tenant has not paid anything towards the \$2,000.00 in unpaid rent identified as owing in the 10 Day Notice since that Notice was posted. She also stated that rent remains unpaid for March 2013.

Analysis

The tenant failed to pay the rent identified as owing 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 February 1, 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 submitted by the landlord, I find that the landlord is entitled to a monetary award for the \$2,800.00 claimed in this application. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

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 tenant's security deposit plus applicable interest in partial satisfaction of the monetary award.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of the 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 under the following terms, which allows the landlord to recover unpaid rent and the filing fee, and to recover the tenant's security deposit:

Item	Amount
Unpaid November 2012 Rent	\$425.00
Unpaid December 2012 Rent	775.00
Unpaid January 2013 Rent	800.00
Unpaid February 2013 Rent	800.00
Less Security Deposit (\$280.00 + \$31.94 = \$311.94)	-311.94
Filing Fee for this Application	50.00
Total Monetary Order	\$2,538.06

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: March 05, 2013

Residential Tenancy Branch

