



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 9:42 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 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's agent (the agent) testified that she handed the tenant the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on February 24, 2013. She also testified that she handed the tenant a copy of the landlord's dispute resolution hearing package on April 3, 2013, accompanied by a witness. She entered into written evidence a copy of the Canada Post Tracking Number to confirm that she also sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on April 3, 2013. I am satisfied that the landlord's agent served the tenant with the above documents 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

This two-year fixed term tenancy commenced on November 1, 2012. Monthly rent is set at \$1,700.00, payable in advance on the first of each month. The landlord's agent

testified that the only security deposit paid by the tenant towards this tenancy and retained by the landlord is a \$500.00 payment made on or about November 15, 2012.

The landlord issued the 10 Day Notice for unpaid rent of \$1,700.00 owing for February 2013. The landlord and her agent testified that the tenant has not paid anything towards his February, March or April 2013 rent. The landlord applied for a monetary award of \$4,999.99 for unpaid rent owing for these three months, as well as an Order of Possession.

Analysis

The tenant failed to pay the amount 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 March 14, 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 landlord's undisputed written evidence and sworn testimony, I find that the landlord is entitled to a monetary award for unpaid rent owing for each of February, March and April 2013. This results in a total monetary award of \$5,100.00 (\$1,700.00 x 3 months = \$5,100.00).

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. 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 this Order** on the tenant(s). 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
Unpaid February 2013 Rent	\$1,700.00
Unpaid March 2013 Rent	1,700.00
Unpaid April 2013 Rent	1,700.00
Less Security Deposit	-500.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$4,650.00

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: April 29, 2013

Residential Tenancy Branch

