



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TENANT: CNC, CNR, DRI, MNSD, OPT, O
 LANDLORD: OPR, MNR, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent, to retain the Tenant's security deposit as partial payment of unpaid rent and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant were done by personal delivery on September 20, 2013 in accordance with section 89 of the Act.

The Tenant filed to cancel the Notice to End Tenancy, to dispute a rent increase, to recover his security deposit, to obtain an order of possession for the rental unit and for other considerations.

The hearing started at 2:00 p.m. as scheduled, however by the end of the hearing at 2:15 p.m. the Tenant had not dialled into the conference call. In the absence of any evidence from the Tenant to support his application, the Tenant's application is dismissed without leave to reapply.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to end the tenancy?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to retain the Tenant's security deposit for unpaid rent?

Background and Evidence

This tenancy started in September, 2005 as a month to month tenancy. Rent is \$545.00 per month payable in advance of the 1st day of each month. The Landlord said the Tenant paid a security deposit of \$242.50 at the start of the tenancy.

The Landlord said that the Tenant had unpaid rent in the amount of \$530.45 for each month of August, September and October, 2013. This amount is \$14.15 less than the monthly rent amount because Social Services pay \$14.15 of the Tenant's rent each month. As a result of the unpaid rent for August and September, 2013 the Landlord gave the Tenant a 10 Day Notice to End Tenancy for unpaid rent on September 2, 2013. Further the Landlord said the Tenant has not paid the full October, 2013 rent and there is \$530.85 still outstanding. The Landlord said if his application is successful he is requesting an Order of Possession for as soon as possible and the Landlord said he is requesting a monetary claim for \$1,592.55 of unpaid rent.

The Landlord also said they are seeking to recover the \$50.00 filing fee for this proceeding. The Landlord said his total claim is for \$1,592.55 in unpaid rent and the \$50.00 filing fee for a total claim of \$1,642.55.

Analysis

Section 26 (1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent

I find that the Tenant has not paid the overdue rent and the Tenant did not have the right to withhold a part or all of the unpaid rent. Consequently, I accept the Landlord's testimony and evidence that there is unpaid rent in the total amount of \$1,592.55. I find for the Landlord and award the Landlord a monetary claim for unpaid rent of \$1,592.55.

Further, I find that the Tenant has not paid the overdue rent and has not been successful in cancelling the 10 Day Notice to End Tenancy for Unpaid Rent; therefore I find pursuant to section 55 (2) (b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

As the Landlords have been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$1,592.55
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	Recover filing fee	\$ 50.00	
	Subtotal:		\$1,642.55
Less:	Security Deposit	\$ 242.50	
	Security Deposit Interest	\$ 8.59	
	Subtotal:		\$ 251.09
	Balance Owing		\$ 1,391.46

Conclusion

An Order of Possession effective 2 days after service of the Order on the Tenant and a Monetary Order in the amount of \$1,391.46 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenant's application is dismissed without leave to reapply.

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: October 21, 2013

Residential Tenancy Branch