



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, 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 and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The female tenant (the tenant) confirmed that the tenants received the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on the tenants' door by the landlord's representative who attended this hearing (the landlord) on August 2, 2013. The tenant confirmed that the landlord handed both tenants copies of the landlord's dispute resolution hearing package on August 28, 2013. She also confirmed that the landlord provided the tenants with copies of the landlord's written evidence. I am satisfied that the landlord has served all of the above documents to the tenants 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 and losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy started as a one-year fixed term tenancy on May 3, 2008. Monthly rent since January 1, 2010 has been set at \$750.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$367.50 security deposit paid on May 5, 2008 and \$200.00 pet damage deposit paid on July 2, 2008.

The landlord issued the 10 Day Notice identifying \$375.00 as owing as of August 1, 2013. The landlord confirmed that the tenant made the following payments to the landlord following the issuance of the 10 Day Notice:

- August 7, 2013 \$100.00
- August 28, 2013 \$40.00
- September 3, 2013 \$100.00
- September 25, 2013 \$375.00
- September 27, 2013 \$100.00

Both parties agreed that the landlord issued receipts for each of the above payments noting that the payments had been accepted for “use and occupancy only.”

The landlord’s original application for a monetary award of \$1,145.00 was revised to \$1,955.00 before this hearing in order for the landlord to obtain a monetary award for unpaid rent for October 2013. The landlord’s application for a monetary award sought recovery of \$335.00 that was owing as of August 8, 2013, unpaid September 2013 rent, late fee and parking, and unpaid October 2013 rent, late fee and parking, less the amounts identified as paid from August 28, 2013 until September 27, 2013.

The tenant testified that she had funds that were being released by the Ministry of Social Development to assist her with her rent payments. She said that she would be working within a week and that she expected to be in a position to pay everything owed to the landlord shortly so as to be able to remain in this tenancy.

Analysis

The tenants failed to pay the \$375.00 identified as owing for rent within three days of being deemed to have received the 10 Day Notice on August 5, 2013. The tenants have not made an application pursuant to section 46(4) of the *Act* within five days of August 5, 2013, the date when they were deemed to have received that Notice. In accordance with section 46(5) of the *Act*, the tenants’ failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by August 15, 2013. I find that the tenants’ subsequent provision of four payments to the landlord, each of which were accepted by the landlord for use and occupancy only, did not reinstate this tenancy. As the tenants have not vacated the premises in accordance with the 10 Day Notice, 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(s). If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I find that the landlord is entitled to a monetary award of \$335.00 for amounts owed for August 2013, and \$810.00 for each of September and October 2013 (\$750.00 rent + \$20.00 late fee + \$40.00 parking = \$810.00), less the amounts paid by the tenants from August 28, 2013 until September 27, 2013.

Although the landlord's application does not seek to retain the tenants' security and pet damage deposits (the deposits), using the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's deposits 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 issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, the filing fee for this application and to retain the tenants deposits:

Item	Amount
Unpaid Amount Owing as of August 8, 2013 Rent	\$335.00
Unpaid September 2013 Rent (\$750.00 + \$20.00 + \$40.00 = \$810.00)	810.00
Unpaid October 2013 Rent (\$750.00 + \$20.00 + \$40.00 = \$810.00)	810.00
Less Payments Made by Tenants from August 28 to September 27, 2013 (\$40.00 + \$100.00 + \$375.00 + \$100.00 = \$615.00)	-615.00
Less Security and Pet Damage Deposits (\$367.50 + \$200.00 = \$567.50)	-567.50
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$822.50

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: October 04, 2013

Residential Tenancy Branch

