



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 3:15 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 he posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on August 2, 2013. The landlord testified that he sent a copy of the landlord's amended dispute resolution hearing package seeking a monetary award of \$2,579.79 by registered mail to the tenant on August 23, 2013. The landlord entered into written evidence a copy of the Canada Post Tracking Number to confirm this registered mailing. I am satisfied that the landlord served the above documents and the landlord's written evidence 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

This tenancy began on January 1, 2003 as a one-year fixed term tenancy. When that term expired, the tenancy converted to a periodic tenancy. Current monthly rent as of March 1, 2013 is set at \$871.51 plus \$15.00 for parking. The landlord continues to hold the tenant's \$325.00 security deposit paid on December 28, 2001 and applied from a previous tenancy.

The landlord testified that the tenant has not paid anything to the landlord since the 10 Day Notice was issued on August 2, 2013. The landlord provided sworn testimony and written evidence in the form of a rent ledger to demonstrate that the tenant continues to owe \$798.77 in unpaid rent from August 2013, \$871.51 + \$15.00 for parking from September 2013, and \$871.51 + \$15.00 for parking for October 2013.

Analysis

The tenant failed to pay the August 2013 rent in full within five days of being deemed to have received the 10 Day Notice on August 5, 2013. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of August 5, 2013. 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 August 15, 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 before me, I am satisfied that the landlord has demonstrated entitlement to a monetary award of \$798.77 owed to the landlord by tenant as of August 1, 2013 and a further \$886.51 ($\$871.51 + \$15.00 = \886.51) for September 2013. As it remains uncertain as to whether the landlord will be able to re-rent the premises to another tenant for a portion of October 2013, I allow the landlord a monetary award of \$435.76 ($\$871.51 \times 50\% = \435.76), an amount which enables the landlord to recover one-half of the stated monthly rent for October 2013 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. I also allow the landlord to recover the filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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 Rent Owing as of August 1, 2013	\$798.77
Unpaid September Rent (and Parking)	886.51
Unpaid Rent Owing for One-Half of October 2013	435.76
Less Security Deposit (\$325.00 + \$11.62 = \$336.62)	-336.62
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,834.42

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: October 02, 2013

Residential Tenancy Branch

