



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:45 p.m. in order to enable him to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The landlord testified that she handed the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) at 2:00 p.m. on October 23, 2013. She entered into written evidence a Proof of Service document signed by both her and the tenant attesting to her hand delivery of the 10 Day Notice to the tenant on October 23, 2013. The landlord testified that she handed the tenant a copy of her original dispute resolution hearing package seeking a monetary award of \$7,000.00 on November 1, 2013. She also testified that she handed the tenant a copy of her amended application for a monetary award of \$8,550.00 on December 6, 2013. I am satisfied that the landlord 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 one-year fixed term tenancy commenced on May 1, 2013. Monthly rent is set at \$1,500.00, payable in advance on the first of each month. Although the tenancy agreement entered into written evidence by the landlord called for the payment of a

\$750.00 security deposit, the landlord said that the tenant has not paid that deposit. She also said that part of her requested monetary award was to obtain this unpaid security deposit.

The landlord's original application for dispute resolution stated that the tenant had not paid rent for August, September or October 2013, in addition to November 2013. Her amended application for dispute resolution was to obtain an additional month's rent of \$1,500.00 for December 2013.

At the hearing, the landlord initially testified that the tenant did not pay any rent for any of the above-stated months. She also testified that no rent was owing from before August 1, 2013. Later, she testified that the tenant had made a \$1,200.00 payment on October 21, 2013, which she had applied to his July 2013 rent. She said that \$300.00 remained owing from July 2013, even though she had earlier stated that nothing was owing prior to August 1, 2013. Later still in this hearing, the landlord testified that she had applied the tenant's \$1,200.00 payment made in August 2013 to unpaid rent for June 2013. She said that \$300.00 remained owing from June 2013. Finally, she testified that the tenant paid \$1,000.00 in June 2013 for rent still then owing for May 2013. She said that this left \$500.00 owing from May 2013.

As I found the landlord's shifting sworn testimony both hard to follow and inconsistent with her earlier sworn and repeated oral testimony and her application for dispute resolution, I asked if she had issued written receipts for the tenant's payments. She said that she had not issued any receipts to the tenant as he did not want them.

Analysis

Based on the consistent portion of the landlord's sworn testimony, I find that the tenant's most recent payment of rent to the landlord occurred on October 21, 2013, prior to the landlord's issuance of the 10 Day Notice. The tenant failed to pay the \$5,500.00 amount identified as owing in the 10 Day Notice in full within five days of receiving the 10 Day 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 corrected effective date of the notice, November 3, 2013. In this case, this required the tenant to vacate the premises by November 3, 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.

As outlined above, I find considerable inconsistencies in the landlord's sworn testimony regarding the payments she received from the tenant and the months for which these payments applied. I accept the landlord's revised testimony that she received the last payment from the tenant on October 21, 2013, in the amount of \$1,200.00, which she applied against rent owed prior to August 1, 2013. However, she provided no dates of payments received in June and August 2013. I also find that the landlord's original application of October 29, 2013 specifically indicated that the tenant had failed to pay his rent for August, September and October 2013. I accept this written evidence as the most accurate record of the rent that was then owing for this tenancy. Since the landlord submitted her original application, rent of \$1,500.00 also became owing for both November and December 2013.

For these reasons and on a balance of probabilities, I allow the landlord a total monetary award of \$7,500.00 for unpaid rent of \$1,500.00 for each of the five months from August to December 2013. I do not issue any monetary award for any of the months preceding August 2013, as the landlord's original application identified no such rent as still owing at that time for May, June or July 2013. The landlord also provided repeated sworn testimony during the first half of this hearing that no rent was owing prior to August 1, 2013. She only varied that testimony once it became apparent that she would be unable to obtain a monetary award for the tenant's non-payment of his security deposit, which would in any event have then been deducted by an equivalent amount from her monetary award had it been granted. Other than her inconsistent sworn testimony, the landlord produced no written evidence to support a claim for rent owing prior to August 1, 2013 from this tenancy. As the landlord has been successful in her application, I allow her to recover her \$100.00 filing fee from the tenant.

Conclusion

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 her application:

Item	Amount
Unpaid August 2013 Rent	\$1,500.00
Unpaid September 2013 Rent	1,500.00
Unpaid October 2013 Rent	1,500.00
Unpaid November 2013 Rent	1,500.00
Unpaid December 2013 Rent	1,500.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$7,600.00

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.

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.

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: December 11, 2013

Residential Tenancy Branch

