



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF, O

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, or tenancy agreement pursuant to section 67;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72; and
- other remedies, identified in her application as a requested Order of Possession.

The tenant did not attend this hearing, although I waited until 11:21 a.m. in order to enable her to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she sent the tenant a copy of her dispute resolution hearing package by registered mail on December 9, 2013. When the tenant refused to accept this registered mail package, the landlord testified that she handed the tenant a copy of her dispute resolution hearing package on December 9, 2013, at approximately 6:30 p.m. Her witness testified that he observed the landlord hand a copy of her hearing package to the tenant. I find that the tenant has been served with a copy of the landlord's dispute resolution hearing package on December 9, 2013.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession? 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 periodic tenancy began on October 15, 2012. Monthly rent is set at \$650.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$325.00 security deposit paid on October 15, 2012.

The landlord testified that on October 12, 2013, the tenant provided her with a notice stating that she intended to vacate the rental unit by November 1, 2013. When that did not happen, on November 22, 2013, the tenant placed a second notice to end tenancy under the landlord's door that was to take effect by November 30, 2013. Although the landlord said that the tenant appears to have begun the process of vacating the rental unit, she has not yet yielded vacant possession of the rental unit to the landlord. The landlord testified that she (the landlord) has not issued any formal notice to end this tenancy on Residential Tenancy Branch approved forms. However, she asked for an Order of Possession based on the tenant's failure to abide by the terms of the tenant's own notices to end this tenancy.

The landlord applied for a monetary award of \$1,950.00, for unpaid rent of \$650.00 for each of October, November and December 2013. As the tenant has also failed to pay her rent for January 2014, the landlord asked for authorization to amend her application to obtain an additional \$650.00 monetary award for January 2014. Under the circumstances, I allowed the landlord to increase the amount of her requested monetary award from \$1,950.00 to \$2,600.00, plus her \$50.00 filing fee for her application.

Analysis

Subsection 44(1)(a)(i) of the *Act* establishes that a tenancy may end if a tenant gives notice to end the tenancy in accordance with section 45 of the *Act*. The landlord gave undisputed sworn testimony that on October 12, 2013 and November 22, 2013, the tenant has given the landlord two separate written notices to end this tenancy. Although the landlord did not provide copies of these notices to end tenancy at the hearing, she said that she did receive these from the tenant and fully expected the tenant to have abided by the terms of her written notices to end this tenancy by initially November 1, 2013, and later by November 30, 2013.

Based on the landlord's undisputed sworn testimony and as I accept the landlord's assertion that the tenant has provided notice to end tenancy under sections 45 of the *Act*, and in accordance with section 52 of the *Act*, I find that the landlord is entitled to a two-day Order of Possession.

I find that the landlord is entitled to a monetary award of \$2,600.00, an amount arising out of the tenant's failure to pay monthly rent of \$650.00 for the months of October 2013 through to the present, (i.e., January 2014).

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. 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 her filing fee, and to retain the tenant's security deposit:

Item	Amount
Unpaid October 2013 Rent	\$650.00
Unpaid November 2013 Rent	650.00
Unpaid December 2013 Rent	650.00
Unpaid January 2014 Rent	650.00
Less Security Deposit	-325.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$2,325.00

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: January 20, 2014

Residential Tenancy Branch

