



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 his filing fee for this application from the tenant 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, to call witnesses and to cross-examine one another. The landlord testified that he has provided the tenant with a series of 10 Day Notices to End Tenancy for Unpaid Rent (the 10 Day Notices). The only 10 Day Notice the landlord entered into written evidence was a copy of a 10 Day Notice dated November 5, 2013, which the landlord testified he handed to the tenant on November 8, 2013. The tenant testified that he did receive that 10 Day Notice, but maintained that he did not receive it until it was posted on his door on November 29, 2013. The landlord testified that he posted a copy of his dispute resolution hearing package on the tenant's door on November 29, 2013. The tenant said that he did receive the landlord's hearing package, but the landlord handed a copy of it to him. Based on the sworn testimony of the parties, I am satisfied that the landlord has served the above documents to the tenant and that the tenant was aware of the landlord's application and his intention to end this tenancy and to seek a monetary award for unpaid rent.

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

The landlord testified that the tenant has lived in one of the rooms in his property for about 10 years. The tenant did not dispute the landlord's claim that the tenant has one separate room and shares some common areas with the resident on the other room on his floor. The landlord and the tenant do not share kitchen or bathroom facilities in this property. The tenant said that he first moved into this building in December 1999. However, he said that his current tenancy began on April 1, 2007. The parties agreed that the tenant's monthly rent is currently set at \$450.00, payable in advance on the first of each month.

The tenant said that he paid a \$425.00 security deposit in 2007. Although the landlord was not certain that a security deposit had been paid by the tenant, he did not dispute the tenant's testimony with respect to the security deposit for this tenancy.

The landlord gave undisputed sworn testimony that the tenant has not paid anything towards his rent from August 2013 until the present. The landlord's application for a monetary award of \$2,250.00 was increased at the hearing to \$2,700.00, as the landlord maintained that the tenant now owed six months of rent. The tenant confirmed that he has not paid rent for these months and has not paid anything to the landlord since he received the landlord's 10 Day Notice in November 2013.

Analysis

The tenant failed to pay the November 2013 rent 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 effective date of the notice. In this case, this required the tenant to vacate the premises by December 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 testimony of the parties, I find that the landlord is entitled to a monetary award of \$450.00 for each of the six months from August 2013 until the present. 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. 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(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.

I issue a monetary Order in the landlord's favour for unpaid rent and to recover his filing fee and to retain the tenant's security deposit:

Item	Amount
Unpaid Rent August 2013 until January 2014 (6 months @ \$450.00 = \$2,700.00)	\$2,700.00
Less Security Deposit (\$425.00 + \$11.25 = \$436.25)	-436.25
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$2,313.75

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 22, 2014

Residential Tenancy Branch

