



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 landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 10:10 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 10:00 a.m. The male landlord (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 gave undisputed sworn testimony and written evidence that he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the 10 Day Notice) on November 20, 2013 by posting the Notice on the tenant's door at 10:00 a.m. and by placing it in the tenant's mailbox. He provided a signed statement from a witness who observed him serve the 10 Day Notice in this way. The landlord also provided written evidence that he sent a copy of the 10 Day Notice to the tenant by registered mail on November 27, 2013. He provided the Canada Post Tracking Number to confirm this registered mailing. In addition, the landlord provided evidence that he posted another copy of the 10 Day Notice on the tenant's door on December 8, 2013. The landlord testified that he sent a copy of the landlords' dispute resolution hearing package to the tenant by registered mail on January 14, 2014. He provided a copy of the Canada Post Tracking Number and Customer Receipt to confirm this mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant has been deemed served with the above documents by the landlords.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent and utilities? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This one year fixed term tenancy began on October 1, 2013. Monthly rent is set at \$1,400.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$700.00 security deposit paid on or about October 1, 2013.

The landlords' 10 Day Notice identified a balance of \$890.00 in rent owing as of November 20, 2013 and \$740.00 in unpaid utilities. The landlord testified that the only payment the landlords have received from the tenant since October 31, 2013 has been a single \$510.00 payment on November 16, 2013, before the 10 Day Notice was issued.

The landlords' application for a monetary award of \$5,090.00 included a request for unpaid rent of \$890.00 for November 2013 and \$1,400.00 for each of December 2013, January 2014 and February 2014.

Analysis

The tenant failed to pay the balance owing for rent and utilities within five days of being deemed to have received the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received 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. In this case, this required the tenant to vacate the premises by December 3, 2013. As that has not occurred, I find that the landlords are entitled to a 2 day Order of Possession. The landlords 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 sworn testimony and written evidence of the landlords, I find that the landlords are allowed a monetary award of \$890.00 for unpaid rent owing from November 2013, and \$1,400.00 for each of December 2013, January 2014 and February 2014.

Although the landlords' application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlords 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 landlords were successful in this application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. Should the tenant and anyone on the rental premises 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 landlords' favour under the following terms, which allows the landlords to recover unpaid rent and the filing fee for their application and to retain the tenant's security deposit:

Item	Amount
Unpaid November 2013 Rent	\$890.00
Unpaid December 2013 Rent	1,400.00
Unpaid January 2014 Rent	1,400.00
Unpaid February 2014 Rent	1,400.00
Less Security Deposit	-700.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$4,440.00

The landlords are 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: February 05, 2014

Residential Tenancy Branch

