



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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 and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; 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 11:13 a.m. in order to enable him 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. She testified that she handed the tenant a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the 10 Day Notice) on January 4, 2014. She entered sworn testimony and written evidence that she sent the tenant a copy of her dispute resolution hearing package by registered mail on January 14, 2014. She provided a copy of the Canada Post Tracking Number and Customer Receipt to confirm this registered mailing. I am satisfied that the landlord served the above documents 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 retain all the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that this periodic tenancy began on June 1 or July 1, 2013. There is no written Residential Tenancy Agreement between the parties. The landlord testified that she rents this basement suite to the tenant for a monthly rent of \$750.00, payable

on the first, plus \$35.00 for cable television. The landlord testified that she continues to hold the tenant's \$350.00 security deposit paid on or about June 1, 2013.

The landlord issued the 10 Day Notice as the tenant had not paid any of his \$750.00 in rent or \$35.00 cable television bill for January 2014. The landlord testified that the tenant's grandmother made a \$400.00 cash payment to the landlord to be applied to the amount owing on January 14, 2014. The landlord testified that on or about January 26, 2014, a further \$200.00 was paid to her by way of a Ministry of Social Development cheque issued in her name. The landlord testified that she advised the tenant at that time that if he could not pay the amount then owing that she was not interested in retaining him as a tenant and he would need to move. The landlord testified that the tenant had promised to move by January 31, 2014. When this did not occur, she said that he told that he had no intention of leaving until she had an Order of Possession and a court bailiff to remove him.

Analysis

Although the landlord has received payments towards this tenancy since she issued the 10 Day Notice, neither of these payments were issued directly by the tenant. I am also satisfied that the landlord clearly advised the tenant that her acceptance of payments was not an indication of her reinstatement of his tenancy, as she testified that she told him that he would still have to leave this basement suite. The tenant failed to pay the January 2014 rent in full 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 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 January 14, 2014. 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 landlord's sworn testimony, I find that the landlord has received payments totalling \$600.00 since January 1, 2014. I thus allow the landlord a monetary award of the remaining \$150.00 in unpaid rent owing for January 2014.

As the tenant has not paid his rent for February 2014, I allow the landlord a monetary award of \$375.00. This amount is to compensate the landlord for unpaid rent for the first one-half of February 2014. Based on the date of this hearing, the landlord may be able to re-rent the premises for the second half of February 2014, in which case she can

recover her loss of rent for that period from a new tenant. If she is unable to re-rent the premises for the second half of February 2014, she is at liberty to reapply for her loss of rent for the second half of February 2014.

I find that the landlord has not substantiated her application for a monetary award for cable bills as she has no written agreement and has supplied no bills for this item. I dismiss the landlord's application for a monetary award for unpaid cable bills without leave to reapply.

I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. I allow the landlord to recover her \$50.00 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 her filing fee and to retain the security deposit:

Item	Amount
Rent Outstanding for January 2014 (\$750.00 - \$400.00 - \$200.00 = \$150.00)	\$150.00
Unpaid Rent – First Half of February 2014	375.00
Less Security Deposit	-350.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$225.00

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: February 05, 2014

Residential Tenancy Branch

