



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remcan Holdings #2
and [tenant name suppressed to protect privacy]

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 the 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 tenant confirmed that the landlord handed him a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on January 3, 2014. The tenant also confirmed that the landlord handed him a copy of the landlord's dispute resolution hearing package on January 14, 2014. I am satisfied that the landlord served the tenant with the above documents in accordance with the *Act*.

At the commencement of the hearing, the tenant testified that he vacated the rental unit before the end of January 2014 and left his keys for the rental unit inside the suite. He said that he sent a note before the end of January 2014 to the landlord at the building office. The landlord was unaware that the tenant had vacated the rental unit.

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 tenancy began as a one-year fixed term tenancy on November 1, 2012. The tenancy converted to a periodic tenancy after the expiration of the first term. Monthly rent is set at \$870.00, payable in advance on the first of each month, plus a \$20.00 parking fee.

The tenant did not dispute the landlord's sworn testimony that the tenant has not paid anything to the landlord since the landlord issued the 10 Day Notice. The tenant maintained that he should only be held responsible for one-half month's rent as he did not dispute the landlord's claim to withhold his security deposit.

The landlord applied for a monetary award of \$1,805.00. This request was for the recovery of unpaid rent for January and February 2014, plus two months unpaid parking and the recovery of the filing fee.

Analysis

Based on the sworn testimony of the parties, I find that this tenancy has ended. I issue an immediate Order of Possession to the landlord to be used in the event that the landlord has not yet taken occupancy of the rental unit.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for February 2014, the tenant would have needed to provide his notice to end this tenancy before January 1, 2014. This did not occur. Section 52 of the *Act* requires that a tenant provide this notice in writing. Although the tenant maintained that he ended his tenancy in accordance with the landlord's 10 Day Notice, that Notice required him to vacate the rental unit by January 13, 2014, which did not happen.

There is undisputed evidence that the tenant did not pay any rent for January 2014. I find that the landlord is entitled to a monetary award of \$870.00 for unpaid rent owing from January 2014.

I also find that the tenant did not give notice of his intention to end his tenancy by January 31, 2014, before January 1, 2014. As such, the landlord is entitled to compensation for losses he incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and section 45(1) of the *Act*. As the tenant has vacated the rental unit and the landlord may be able mitigate the loss of rent for the final half of February 2014 by re-renting to a new tenant, I limit the landlord's monetary award for February 2014 to \$435.00, which allows the landlord a monetary award for only the first half of February 2014. The landlord is at liberty to reapply for a further monetary award for the loss of rent for the final half of February 2014, if the landlord is unsuccessful in re-renting the premises before March 1, 2014.

I dismiss the landlord's application for a monetary award for unpaid parking fees without leave to reapply as the landlord has not demonstrated that this was a specific term of the residential tenancy agreement between the parties.

As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant. 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.

Conclusion

For the sake of clarity and to give effect to what has already occurred with respect to this tenancy, I grant an immediate Order of Possession to the landlord. This Order may be filed and enforced as an Order of the Supreme Court of British Columbia should for some reason that become necessary.

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 and to retain the security deposit:

Item	Amount
Unpaid January 2014 Rent	\$870.00
Unpaid Rent for First Half of February 2014 (\$870.00 x 50% = \$435.00)	435.00
Less Security Deposit	-435.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$920.00

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

