



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bon Terra Holdings Ltd.
and [tenant name suppressed to protect privacy]

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 or unpaid rent 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 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 tenant confirmed that he received the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on his door by the landlord's representatives on January 3, 2014. The tenant also confirmed that he received a copy of the landlord's dispute resolution hearing package posted on his door on January 17, 2014. I am satisfied that the tenant acknowledged that he has been served with the above documents and copies of the landlord's written evidence so as to enable him to prepare for this hearing.

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 or a portion of 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

This tenancy commenced on or about April 1, 1996. Monthly rent is currently set at \$650.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$275.00 security deposit paid on or about April 1, 1996.

The landlord testified that the tenant has paid \$240.00 on January 17, 2014 and another \$240.00 on January 31, 2014, after the 10 Day Notice was issued. The tenant did not dispute the landlord's claim that the tenant's January 2014 payments were accepted for "use and occupancy only" as stated on the landlord's written receipts. The tenant did not dispute the landlord's claim that \$2,388.00 in rent remains outstanding from this tenancy. The landlord testified that the tenant has not paid anything towards his February 2014 rent. He increased the requested amount of the monetary award from \$2,218.00 identified on the application to \$2,388.00 due to the January 2014 payments and the unpaid rent owing for February 2014. The landlord entered into written evidence a tenant ledger providing a breakdown of amounts owing and paid since January 2013.

At the hearing, the landlord said that he was willing to allow the tenant to stay in the rental unit until February 28, 2014, at which time he would like the tenant to vacate the premises.

Analysis

I find that the landlord's acceptance of the two payments of \$240.00 in late January 2014 for use and occupancy only did not reinstate this tenancy. The tenant failed to pay the amount identified as owing in the 10 Day Notice in full within five days of being deemed to have received that Notice on January 6, 2014. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of January 6, 2014. 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 January 16, 2014. As that has not occurred, I find that the landlord is entitled to an Order of Possession to take effect by 1:00 p.m. on February 28, 2014. 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 by that time and date, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the landlord's undisputed sworn testimony and written evidence, I find that the landlord is entitled to a monetary award of \$2,388.00 for unpaid rent owing as of February 2, 2014. I allow the landlord to retain the tenant's security deposit plus interest to partially satisfy this monetary award. I also allow the landlord to recover the \$50.00 filing fee from the tenant.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective at 1:00 p.m. on February 28, 2014. 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 the filing fee, and to retain the tenant's security deposit:

Item	Amount
Unpaid Rent Owing from this Tenancy as of February 2, 2014	\$2,388.00
Less Security Deposit (\$275.00 + \$43.29 = \$318.29)	-318.29
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$2,119.71

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 14, 2014

Residential Tenancy Branch

