



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 was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to recover the filing fee for this application - Section 72.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The tenant requested an adjournment claiming they had receipts to prove they had provided the landlord with the payable rent for March 2014 and both parties stated they could testify to the particulars of this evidence in this hearing. As a result the hearing continued on the available evidence and merits in this matter.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

I have benefit of a copy of the written tenancy agreement signed February 14, 2014. The tenancy began on February 15, 2014. Rent in the amount of \$1150.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$575.00 which the landlord retains in trust. The parties agree the tenant has a receipt for the security deposit in the paid amount. The landlord claims the tenant failed to pay rent for the month of March 2014 and on March 07, 2014 the landlord served the tenant with a notice to end tenancy

for non-payment of rent. The landlord's monetary claim is for the unpaid rent for March 2014 and an Order of Possession.

The tenant claims they paid the rent for March 2014 and have 2 receipts in hand issued by the landlord: a *bank draft receipt* in favour of the landlord in the amount of \$575.00; and, a *hand-written receipt* from the landlord for \$575.00 – both dated March 01, 2014.

The tenant testified they do not possess proof they paid the half month's rent payable from February 15, 2014. The landlord claims they received a cheque for the half month February rent from the tenant's relative, but that it was returned as insufficient funds, and the tenant does not dispute this claim.

The landlord and tenant agree that on March 01, 2014 the landlord received a bank draft for \$575.00. The landlord claims they accepted this amount for the unsatisfied rent for February. The tenant claims this amount was destined for March rent. The landlord and tenant agree that on the same date of March 01, 2014 the tenant was given a hand-written receipt for \$575.00. The landlord claims the receipt was to confirm the payment by bank draft - the tenant claims that on the same date they provided the bank draft they gave the landlord cash for the balance of March 2014. The landlord and their agent strongly denied receiving any cash from the tenant, and that the rent for March has not been satisfied.

Analysis

On preponderance of the testimony and document evidence before me I have reached a Decision. I find the testimony of the landlord and tenant establishes that the tenant did not satisfy the half month's rent owed for February 2014. I find I prefer the evidence of the landlord that they accepted the bank draft amount given on March 01, 2014 for the unpaid February rent.

I find the parties agree the tenant has a receipt dated March 01, 2014 for \$575.00. I find that given the tenant's testimony they possessed cash for the balance of March rent along with a bank draft, that it was available for the tenant to obtain a bank draft for all of the rent for March 2014 – in the amount of \$1150.00. On balance of probabilities, I prefer the landlord's testimony that the hand-written receipt dated March 01, 2014 was as confirmation for the March 01, 2014 bank draft amount, and not for a separate cash amount. As a result of all the above, I find that on March 01, 2014 the tenant only possessed receipts satisfying rent owed to the landlord to the end of February 2014.

I find that on March 07, 2014 the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The tenant has not provided evidence they paid any rent for March 2014, and has not provided credible testimony that their evidence establishes they satisfied the rent in dispute. The tenant further failed to apply for Dispute Resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

As a result of all the above I find that the landlord is entitled to an **Order of Possession**.

I also find that the landlord has established a monetary claim for unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. Any applicable security deposit will be off-set.

Calculation for Monetary Order

Unpaid rent for March 2014	\$1150.00
Filing fee	50.00
<i>Less applicable security deposit</i>	<i>-575.00</i>
Total monetary award	\$625.00

Conclusion

I grant an **Order of Possession** to the landlord **effective 2 days** from the day it is served on the tenant. The tenant must be served with this Order. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I Order that the landlord retain the security deposit of \$575.00 in partial satisfaction of the claim and **I grant** the landlord an Order under Section 67 of the Act for the balance due of **\$625.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: March 25, 2014

Residential Tenancy Branch

