



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nacel Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, 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 and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:46 p.m. in order to enable him to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord's representatives attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord's male representative (the male landlord) testified that he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice or the original 10 Day Notice) on the tenant's door on January 3, 2014. He testified that he handed a second 10 Day Notice (the second Notice) to the tenant on March 4, 2014. He also testified that he handed the tenant a copy of the landlord's dispute resolution hearing package on January 21, 2014. I am satisfied that the tenant was served with the above notices in accordance with sections 88, 89 and 90 of the *Act*.

At the beginning of the hearing, the landlord's female representative (the female landlord) reduced the amount of the landlord's requested monetary award from \$1,900.00 to \$950.00, the amount of unpaid rent she said was currently owing.

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 and losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began as a six-month fixed term tenancy on January 15, 2013. After the expiration of the initial term, the tenancy continued as a periodic tenancy. Monthly rent is currently set at \$950.00, payable on the first of each month. The landlords continue to hold the tenant's \$475.00 security deposit paid on January 15, 2013.

The 10 Day Notice entered into written evidence by the landlords identified \$950.00 in rent owing as of January 3, 2014. The landlords entered written evidence in the form of a tenant rent ledger regarding payments made and amounts owing for this tenancy. This ledger revealed that the tenant paid \$225.00 to the landlord on January 15, 2014, \$750.00 on January 21, 2014, and \$950.00 on February 4, 2014. At the hearing, the landlord's representatives gave sworn testimony that each of the above payments were accepted for use and occupancy only as noted on the receipts issued to the tenant and not to reinstate this tenancy. The female landlord testified that she issued receipt #728403 for the January 15 payment and receipt # 728407 for the January 21, 2014 payment, both for use and occupancy only. She testified that receipt #728441 was signed by the male landlord for the tenant's February 4, 2014 payment of \$950.00, accepted again, as noted on the receipt for use and occupancy only.

The landlords noted that \$950.00 remains owing for March 2014. They requested the issuance of an Order of Possession on the basis of the original 10 Day Notice and a monetary award of \$950.00 for the current amount of unpaid rent.

Analysis

I find that the landlord's acceptance of three payments from the tenant since the 10 Day Notice was issued for use and occupancy only did not reinstate this tenancy beyond the stated effective date of the original 10 Day Notice. The tenant failed to pay the amount identified as owing on the original 10 Day Notice in full within five days of being deemed to have received that 10 Day Notice on January 6, 2014. 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 January 16, 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 landlords' undisputed sworn testimony and detailed written evidence from the tenant ledger, I find that the landlord is entitled to a monetary award of \$950.00 for unpaid rent currently owing for March 2014.

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. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

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 the filing fee and to retain the tenant's security deposit:

| Item | Amount |
|---|-----------------|
| Unpaid March 2014 Rent | \$950.00 |
| Less Security Deposit | -475.00 |
| Recovery of Filing Fee for this Application | 50.00 |
| Total Monetary Order | \$525.00 |

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: March 06, 2014

Residential Tenancy Branch

