



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNSD, 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, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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.

The tenant did not attend this hearing, although I waited until 2:10 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.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. The landlord provided sworn testimony and written evidence in the form of a signed Proof of Service document attesting to the landlord's posting of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door at 4:40 p.m. on February 2, 2014. The landlord's wife gave sworn testimony and written evidence that she saw the landlord post this notice on the tenant's door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on February 5, 2014, the third day after its posting.

The landlord also testified that he sent the tenant a copy of the landlord's original dispute resolution hearing package in which he was seeking a monetary award of \$2,720.00 for unpaid rent by registered mail. During the course of this hearing, the landlord's wife was able to locate the Canada Post Tracking Number to show that the hearing package was sent on February 13, 2014. The landlord also testified that he handed the tenant a copy of his original hearing package sometime early in March 2014. The landlord's wife testified that she witnessed her husband hand the tenant a

copy of the original hearing package early in March 2014. The landlord testified that he also posted a copy of his amended hearing package in which he had increased the amount of his requested monetary award to \$4,380.00 on the tenant's door on March 28, 2014. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's original dispute resolution hearing package on February 18, 2014, the fifth day after its registered mailing.

As the tenant clearly was aware that she had not paid any rent to the landlord since the landlord applied for dispute resolution, I have also considered the landlord's application for the additional two month's rent owing for March and April 2014. I have considered the landlord's application for a monetary award of \$4,080.00, the amount of the outstanding rent claimed by the landlord.

I am not satisfied that the tenant was served with the landlord's amended application for dispute resolution in which an additional \$300.00 in damage to a window was claimed in accordance with one of the ways to serve such notices under section 89(1) of the *Act*. This section of the *Act* does not allow a landlord to serve notice of an application for a monetary award by posting a copy of the application on a tenant's door. I dismiss the landlord's application for a monetary award for this damage with leave to reapply.

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 periodic tenancy began on or about June 1, 2011. Monthly rent is set at \$680.00, payable in advance on the 30th day of the month. The landlord continues to hold the tenant's \$325.00 security deposit paid on or about June 1, 2011.

The landlord testified that the tenant has not paid any rent for November 2013 nor any subsequent month. The landlord requested a monetary award of \$680.00 for each of these six months. As noted above, I have not considered the landlord's request for a \$300.00 monetary award for damage to a window because the landlord has not properly served the tenant with notice of this additional item included in the landlord's amended application for dispute resolution.

Analysis

The tenant failed to pay the amount identified as owing in the 10 Day Notice in full within five days of receiving 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 her tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by February 15, 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.

I also find that the landlord has demonstrated his entitlement to a monetary award of \$680.00 for each of the six months from November 2013 until and including April 2014. I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award requested. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover his \$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(s). Should the tenant(s) 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 his filing fee and to retain the security deposit:

Item	Amount
Unpaid Rent – November 2013 to April 2013 (6 months @ \$680.00 = \$4,080.00)	\$4,080.00
Less Security Deposit	-325.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$3,805.00

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: April 02, 2014

Residential Tenancy Branch

