



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bristol Estates
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR; MNR; MNDC; MNSD; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of revenue; to retain the security deposit in partial satisfaction of its monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord's agent DS testified that she hand-delivered the Notice of Hearing documents to the Tenant on October 17, 2014. The Tenant acknowledged service of the documents.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to unpaid rent and loss of revenue for the months of October, November and December, 2014?
- Is the Landlord entitled to late fees for late rent?

Background and Evidence

This tenancy began on August 1, 2014. Monthly rent is \$950.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$475.00 at the beginning of the tenancy.

DS stated that the Tenant did not pay rent for the month of October, 2014, when it was due. The Landlord's agent MM issued a Notice to End Tenancy for Unpaid Rent on October 2, 2014 (the "Notice"). The Tenant acknowledged receiving the Notice on October 2, 2014. He also acknowledged that he has not filed an Application to cancel the Notice.

The Tenant acknowledged that he has not paid rent for the months of October and November. He stated that he was having financial difficulties which are now sorted out. The Tenant stated that he wished to stay and asked the Landlord's agents if they would consider a payment plan in order to catch up on the unpaid rent.

The Landlords' agents stated that they did not wish to enter into settlement discussions at this time. They asked for an Order of Possession and a Monetary Order.

Analysis

The Notice is an undisputed notice to end tenancy. Section 46(4) of the Act provides that within 5 days of receipt of a notice to end tenancy for unpaid rent, a tenant has 5 days to pay the outstanding rent or to dispute the notice by filing an application for dispute resolution. In this case, the Tenant has not paid the outstanding rent or filed an application.

Section 46(5) of the Act provides that if a tenant does not pay the rent or dispute the notice to end tenancy within 5 days of receipt of the notice, he is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

I find that the Tenant received the Notice on October 2, 2014, and that the tenancy ended on October 12, 2014. Therefore, I find that the Tenant is overholding and the Landlord is entitled to an Order of Possession effective two days after service of the Order upon the Tenant.

The Landlord seeks compensation for loss of revenue for the month of December, 2014. I find that this portion of their application is premature and I dismiss it with leave to reapply.

I find that the Landlord is entitled to unpaid rent for the month of October and loss of revenue for the month of November, 2014. Based on a term of the tenancy agreement, I also find that the Landlord is entitled to late fees for the month of October, 2014, in the amount of \$25.00. The late fee is a fee for late rent, and I find that the tenancy ended on October 12, 2014. Therefore, I decline to award late fees for the months of November and December, 2014.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary award.

The Landlord has been successful in its application and I find that it is entitled to recover the cost of the filing fee from the Tenant.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

Un paid rent and loss of revenue (October and November, 2014)	\$1,900.00
Late fee for unpaid rent for October, 2014)	\$25.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,975.00
Less security deposit	<u>- \$475.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$1,500.00

Conclusion

I hereby provide the Landlord with an Order of Possession effective **2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord with a Monetary Order in the amount of **\$1,500.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order 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: November 27, 2014

Residential Tenancy Branch

