



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUCCESS REALTY & INSURANCE LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, 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 pursuant to section 67; 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, and to make submissions.

The landlords' agent testified and provided documentary evidence that he served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on October 2, 2014 by posting it on the tenant's door. Based on the tenant's confirmation of receipt of this 10 Day Notice and pursuant to section 88 and 90 of the *Act*, I find the tenant deemed served with the 10 Day Notice on October 5, 2014, three days after its posting on the tenant's door. The corrected effective date of that notice is October 15, 2014.

The landlord's agent testified and provided documentary evidence that he served the tenant with the Notice of Dispute Resolution and hearing package on November 5, 2014 by registered mail. The landlord provided a receipt and tracking number with respect to this mailing. Based on the testimony and evidence, pursuant to section 89 and 90 of the *Act*, I find the tenant deemed served with the Notice of Dispute Resolution on November 10, 2014, five days after registered mailing.

Issues 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 recover the filing fee for this application from the tenant?

Background and Evidence

This month to month tenancy began May 1, 2008. The current rental agreement was signed April 26, 2010. The rental amount of \$878.00 is payable on the first of each month. The landlord continues to hold a security deposit in the amount of \$382.50.

The landlord issued the 10 Day Notice for unpaid rent of \$878.00 due on October 1, 2014. The landlord's agent testified that the tenant has consistently paid rent late. He also testified that rent from October and November remains unpaid. He seeks \$1,756.00 in unpaid rent. The tenant testified that he has not paid rent for October or November and continues to reside in the rental unit.

The tenant did not dispute that he has not paid rent for October or November. He acknowledged and agreed that the rental amount outstanding is \$1,756.00 with respect to this tenancy. The tenant testified that he intends to move out immediately, before December 1, 2014.

Analysis

The Act is clear with respect to the rules regarding payment of rent. Section 26(1) states,

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The tenant failed to pay the rent identified in the 10 Day Notice in full within five days of receiving that 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 his tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by October 15, 2012. 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.

The landlord seeks a monetary award for the outstanding two month's rent. The rental amount is \$ 878.00. Two month's unpaid rent leads to an outstanding balance of \$1,756.00.

Given that the landlord has taken all required steps in this matter and that there is undisputed evidence regarding the outstanding rental amount, I issue the landlord a monetary Order in the amount requested of \$1756.00. I allow the landlord to retain all of the tenant's security deposit in partial satisfaction of the monetary award. Since the landlord was successful in this application, the landlord is entitled to recover the filing fee.

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 as follows, which allows the landlord to recover unpaid rent and the filing fee, and to retain the tenant's security deposit:

Item	Amount
Unpaid Rent – October	\$878.00
Unpaid Rent - November	\$878.00
Less Security Deposit	- 382.50
Recovery of Filing Fee for this Application	\$50.00
Total Monetary Order	\$1,423.50

The landlord is provided with this Order 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: December 23, 2014

Residential Tenancy Branch

