



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, 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 the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:48 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord and her agent attended the hearing. The landlord did not speak proper English, so her son/agent ("landlord's agent") provided oral evidence during the hearing and he was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord's agent gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent, dated September 9, 2014 ("10 Day Notice"), was posted to the door where the tenant was residing, on September 9, 2014. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on September 12, 2014, the third day after its posting.

The landlord's agent testified that the tenant was served with the Application for Dispute Resolution hearing package ("Application") on November 7, 2014, both personally at the rental unit and via registered mail, on the same date. The landlord's agent testified that the tenant was served by both methods to ensure that she received the Application, as she was difficult to get in touch with personally. He testified that the tenant was aware of the hearing and Application, as the landlord discussed it with her when she was served personally. A Canada Post receipt and tracking number was attached as proof of service of the registered mailing, with the landlord's application. In accordance with

sections 89 and 90 of the *Act*, I find that the tenant was served with the Application on November 7, 2014.

In her Application, the landlord requested an amendment to correct the spelling of the tenant's first name, which I have granted. The correct spelling is now reflected in the cover page of this decision.

Issue(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 arising out of this tenancy?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord's agent testified that this periodic tenancy began on June 1, 2014. Monthly rent is payable in the amount of \$550.00 on the first day of each month. The landlord's agent testified that the landlord was flexible in allowing rent payments to be made anytime between the first and fifth day of each month. A security deposit of \$275.00 was paid by the tenant ten days prior to the start of this tenancy. The tenant occupies a basement suite in the landlord's house. There is no written tenancy agreement for this tenancy.

The landlord posted a 10 Day Notice on September 9, 2014 for unpaid rent in the total amount of \$600.00, which includes \$50.00 for August 2014 and \$550.00 for September 2014. Subsequently, a mutual agreement to end a tenancy was signed by both parties on September 18, 2014 ("mutual agreement"), with the assistance of the tenant's family support worker, DO. The mutual agreement was provided with the landlord's Application and stated that the tenant agreed to vacate the rental unit by 8:00 a.m. on October 31, 2014.

The landlord's agent testified that he spoke with the tenant on October 31, 2014, after she failed to vacate the rental unit and she stated that she was unable to move to her new rental unit. The landlord's agent is unaware as to whether the tenant has vacated the rental unit. The landlord's agent has looked into the rental unit from a window and the tenant's furniture still remains in the unit, but her other possessions have been removed. The landlord gave written notice to enter the rental unit the day before this

hearing but, at the time of the hearing, was not yet permitted to enter to determine whether the tenant is still there.

The landlord's agent testified that the tenant agreed orally to pay for all outstanding rent, including October 2014 rent, when she signed the mutual agreement. He stated that the tenant was to have social assistance pay for her rent, but this has not occurred. The landlord made numerous requests to recover outstanding rent from the tenant in September and October 2014, which is documented in the landlord's timeline of events, provided with her Application.

The landlord's agent confirmed that the tenant has not made any payments towards outstanding rent for August, September, October or November 2014, totalling \$1,700.00.

The landlord is also seeking to recover the filing fee of \$50.00 for her application from the tenant.

Analysis

The tenant failed to pay the full rent for August and September 2014 within five days of being deemed to have received the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice.

Subsequently, the landlord and tenant both signed a mutual agreement to end the tenancy, whereby the tenant agreed to vacate the rental unit by 8:00 a.m. on October 31, 2014. The mutual agreement required the tenant and anyone on the premises to vacate the premises by October 31, 2014. As this has not occurred, I find that the landlord is entitled to a 5 day Order of Possession. This order of possession is based on the tenant's breach of the mutual agreement with the landlord. Although the landlord did not apply for an order of possession for breach of an agreement with the landlord, I am amending her application to add this claim for relief, in accordance with my authority to do so under Section 64(3)(c) of the *Act*. I find that the tenant would not be prejudiced by this amendment, as the details of the dispute in the landlord's application clearly advised the tenant of the landlord's intent to pursue an end to this tenancy on the basis that the tenant had failed to abide by the terms of their mutual agreement. The tenant had notice of the landlord's application when she was served personally and via registered mail on November 7, 2014. Therefore, even though she did not attend the hearing, the tenant had notice of it and discussed the application with the landlord on November 7, 2014.

The full unpaid monthly rent of \$550.00 for each of September, October and November 2014, totals \$1,650.00. The partial unpaid rent for August 2014 totals \$50.00.

Therefore, I find that the landlord is entitled to rental arrears outstanding in the amount of \$1,700.00 against the tenant.

The landlord's agent stated that the tenant has not paid rent for December 2014, but I noted that the tenant had until the end of the day on the date of the hearing, December 1, 2014, to pay for this rent. I further noted that the landlord can make another monetary application to recover this December 2014 rent amount, if it is unpaid by the tenant.

Although the landlord has not applied to retain the tenant's security deposit of \$275.00, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit 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 she is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlord effective **five days after service of this Order** on the tenant. Should the tenant or anyone on the premises 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 in the amount of \$1,475.00 against the tenant as follows:

August 2014 rent	\$50.00
September 2014 rent	550.00
October 2014 rent	550.00
November 2014 rent	550.00
Less Security Deposit	-275.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$1,475.00

The landlord is provided with a monetary order in the amount of \$1,475.00 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: December 02, 2014

Residential Tenancy Branch

