



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

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; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant did not attend this hearing, although I waited until 0951 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. 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 testified that he served the tenant with the dispute resolution package on 3 December 2014 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with dispute resolution package pursuant to sections 89 and 90 of the Act.

The landlord testified that he personally served the tenant with the 10 Day Notice on 16 November 2014. The landlord provided me with a witnessed proof of service document. On the basis of this evidence, I am satisfied that the tenant was served with 10 Day Notice pursuant to section 88 of the Act.

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?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

In June 2014, the tenant began occupying the rental unit. On 18 July 2014, a community organization provided \$150.00 to the landlord for the tenant's security deposit. On 16 November 2014, the tenant and landlord signed a tenancy agreement. The agreement purported to cover a tenancy that began 1 October 2014. Monthly rent of \$900.00 is due on the first.

On 16 November 2014, the landlord issued the 10 Day Notice to the tenant. This notice was the last in a series of notices. The 10 Day Notice was dated 16 November 2014 and set out an effective date of 26 November 2014. The 10 Day Notice set out that the tenant failed to pay \$1,485.00 in rent that was due on 1 November 2014. The rental arrears included \$900.00 from November and \$585.00 from October's rent.

On 21 November 2014, the tenant paid \$500.00 towards her rental arrears. The landlord issued a receipt to the tenant that the payment was received on the basis of "use and occupancy only". The landlord testified that he has not received any payments since 21 November 2014.

The landlord claims for rental arrears totaling \$1,885.00:

| Item | Amount |
|---|-------------------|
| Unpaid October Rent | \$585.00 |
| Unpaid November Rent | 900.00 |
| Payment Received for Use and Occupancy (21 November 2014) | -500.00 |
| Unpaid December Rent | 900.00 |
| Total Monetary Order Sought | \$1,885.00 |

The landlord also seeks to collect the balance of the \$450.00 damage deposit in the amount of \$300.00.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 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 effective date of the notice. In this case, this required the tenant to vacate the premises by 26 November 2014. As that has not occurred, I find that the landlord is entitled to a two-day order of possession. The landlord will be given a formal order of possession which must be served on the tenant(s). If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this order in the Supreme Court of British Columbia.

The landlord has provided sworn and uncontested testimony that the tenant has unpaid rental arrears totaling \$1,885.00. I find that the landlord has proven his entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent.

The landlord seeks payment of the balance of the tenant's security deposit. As the tenancy is ending, I decline to order that any security deposit be paid from the tenant to the landlord.

The landlord testified that he continued to hold the tenant's \$150.00 security deposit, plus interest, paid on 18 July 2014. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,735.00 under the following terms:

| Item | Amount |
|--|-------------------|
| Unpaid October Rent | \$585.00 |
| Unpaid November Rent | 900.00 |
| Payment Received for Use and Occupancy | -500.00 |
| Unpaid December Rent | 900.00 |
| Offset Security Deposit | -150.00 |
| Total Monetary Order | \$1,735.00 |

The landlord is provided with a formal copy of an order of possession. 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the *Residential Tenancy Act*.

Dated: December 15, 2014

Residential Tenancy Branch

