



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 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 landlord testified that the 10 Day Notice (the 10 Day Notice) to End Tenancy for Unpaid Rent or Utilities was personally served on October 27, 2014. The tenant acknowledged receipt of this notice. Pursuant to section 88 of the *Act*, I find the tenant duly served with this 10 Day Notice on October 27, 2014.

The landlord testified that she personally served the application for dispute resolution and the Notice of Hearing on November 20, 2014. The tenant acknowledges receipt of this package and notice. Based on all the testimony and pursuant to section 89 of the *Act*, I find that the tenant duly served with the dispute Resolution hearing package on November 20, 2014.

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 on July 15, 2014 with a rental amount of \$750.00 paid on the first of each month. The landlord continues to hold a security deposit in the amount of \$375.00 paid on July 15, 2014.

The landlord testified that the tenant has been repeatedly late paying rent. She testified that, in the past three months, he has not paid rent at all. The tenant acknowledges outstanding, unpaid rent for the months of September, October and November. No payments have been made by the tenant to the landlord since August 2014.

The tenant testified that he intends to move out on or before December 15, 2014. He stated that the landlord has been very accommodating to him over the course of his tenancy. However, he stated that, in the last month, the landlord changed the locks on the exterior door of the residential premises. He testified that this has made his living situation in the residential premises difficult.

Both the landlord and the tenant testified that a previous dispute resolution hearing had occurred with respect to this tenancy. On October 28, 2014, an arbitrator assisted in settling the tenancy dispute by facilitating a payment arrangement for outstanding rental amounts. That decision referred to \$2250.00 in unpaid rent and \$94.46 in unpaid utilities. The landlord received a monetary order to take effect if the payment arrangement was not met. Based on the previous order of a monetary award, the landlord withdrew her claim for a monetary order during this hearing.

Analysis

The landlord withdrew her claim for a monetary order at this hearing. A monetary order has been awarded at a previous hearing.

The landlord seeks an immediate order of possession based on unpaid rent.

Section 46(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent “by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.” Section 46(2) of the *Act* requires that “a notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 of the *Act* reads in part as follows:

- 52 *In order to be effective, a notice to end tenancy must be in writing and must...*
- (a) be signed and dated by the landlord or tenant giving the notice,*
 - (b) give the address of the rental unit,*
 - (c) state the effective date of the notice,*
 - (d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
 - (e) when given by a landlord, be in the approved form.*

The landlord has taken all the necessary steps in preparing and serving a 10 Day Notice to End Tenancy. She has also taken the exceptional steps of attempting to resolve this matter by settlement at a previous hearing.

Section 26(1) of the *Act* establishes that “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 acknowledges the landlord’s claim that rent remains unpaid for the months of September, October and November 2014. He testified that he made unsuccessful efforts to continue this tenancy.

Based on the undisputed evidence, I find that the tenant has regularly paid rent late and that he has not paid rent since August 2014. The landlord has provided sufficient evidence to support her application for an Order of Possession based on unpaid rent and utilities.

The landlord withdrew her claim for a monetary order for unpaid rent, given the previous arbitrator’s finding and award.

Since the landlord was successful in this application, I find the landlord is entitled to recover her filing fee for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlord’s application for a monetary award without leave to reapply.

I order a monetary award to the landlord to recovery her filing fee in the amount of \$50.00. The landlord continues to hold a security deposit in the amount of \$375.00. I will allow the landlord to retain a portion of the security deposit to recover the filing fee. That security deposit will be reduced from \$375.00 to \$325.00.

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 11, 2014

Residential Tenancy Branch

