



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, 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 and late fees pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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 the 9:30 a.m. hearing continued until 9:42 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

The landlord provided documentary evidence and testified that she witnessed the service of the 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice"). The landlord's agent served the 10 Day Notice to the tenant by posting it on her door on November 2, 2014. Based on the documentary evidence provided by the landlord and pursuant to section 88 and 90 of the *Act*, I find the tenant has been served with the 10 Day Notice on November 5, 2014, three days after its posting. The corrected effective date of the 10 Day Notice is November 15, 2014.

The landlord testified that she served the tenant with the Notice of Dispute Resolution hearing sending it by registered mail on November 15, 2014. The landlord provided a receipt and tracking number to confirm this mailing. Based on this evidence and pursuant to section 89 and 90 of the *Act*, I find the tenant deemed served with the Dispute Resolution hearing documents on November 20, 2014, five days after its 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 and losses 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 gave evidence that this month to month tenancy began February 1, 2014. The rental amount of \$1200.00 per month is payable on the first of each month. The landlord continues to hold a security deposit in the amount of \$600.00 paid by the tenant on January 8, 2014.

The landlord has applied for an Order of Possession for non-payment of rent for the month of November 1, 2014. The landlord testified that the tenant did not pay rent of \$1200.00 due on November 1, 2014. The landlord testified that there has been a history of late payment of rent by the tenant.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not pay the November 2014 rent after receiving the 10 Day Notice on November 5, 2014. The landlord testified that there has been no communication between the landlord and tenant. The landlord testified that the tenant appears to have vacated the unit as of December 1, 2014. However, the tenant has provided no formal written notice to end tenancy and has not returned the keys to the rental unit.

The landlord is also seeking a monetary award of \$1225.00 for the month of November 2014 and \$25.00 in late charges for November. The landlord pointed to the residential tenancy agreement submitted for this hearing that indicates a penalty of \$25.00 for late rent.

The landlord testified that, with respect to her application for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, she merely sought a monetary award for unpaid rent and the late fee at this time.

Analysis

The tenant failed to pay the November 2014 rent within five days of receiving the 10 Day Notice to End Tenancy. 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 her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by November 15, 2014. 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.

I find that the landlord is entitled to receive a monetary order for unpaid rent in November 2014. The landlord testified that the rental unit is vacant and did not seek to amend her claim with respect to December rent. I issue the attached monetary order that includes the landlord's application for \$1200.00 in unpaid rent for November 2014.

The landlord also applied for \$25.00 fees for late payment of rent for November 2014. She provided copies of the written tenancy agreement which established this late payment fee. I find that the landlord is entitled to a \$25.00 late fee for the month of November 2014.

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 tenant's security deposit plus applicable interest 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 the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate (and return keys to) the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlord as follows:

Item	Amount
Rental Arrears for November 2014	\$1200.00
Late Payment Fee for November 2014	25.00
Less Security Deposit	-600.00
Recovery of Filing Fee for this application	50.00

Total Monetary Award	\$675.00
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The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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 18, 2014

Residential Tenancy Branch

