



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not appear. The landlord was given full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice") was personally served to the tenant on January 2, 2015 at 10:39. He submitted a proof of service document as evidence to support his testimony. The landlord gave sworn testimony that he served the tenant with the Application for Dispute Resolution hearing package on January 8, 2015 by sending it by registered mail. I accept that the tenant was duly served with the 10 Day Notice on January 2, 2015 and deemed served with the Application for Dispute Resolution hearing package on January 13, 2015, 5 days after its mailing.

Preliminary Issue – Amendment

At the hearing the landlord asked to amend his application to correct the name of the tenant. In applying for the dispute resolution hearing, the landlord entered the tenant's first name as his last name and vice versa. He applied to enter the name as it appears on both the tenancy agreement and the 10 Day Notice. I allowed this amendment—pursuant to paragraph 64(3)(c). I find the amendment would not result in prejudice to

the respondent in this matter. The tenant respondent is named sufficiently for the purposes of serving notice of this hearing. The landlord's other documents, including the 10 Day Notice itself have no such error. The tenant is presumed to know that a 10 Day Notice was issued and that the rent was unpaid. For these reasons, I am exercising my discretion to amend the landlord's application to reflect the correct order of the first and last name of the tenant.

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 for damage or loss arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

This six month fixed term tenancy began on July 1, 2014 with a rental amount of \$900.00 payable on the first of each month. After the end of the fixed term, the landlord testified that the tenancy was to continue on a month to month basis. The landlord testified that he continues to hold a \$450.00 security deposit paid by the tenant on July 11, 2014.

The landlord has applied for an Order of Possession for unpaid rent for the months of December 2014 and January 2015. The landlord testified that the tenant did not pay rent of \$900.00 due on December 1, 2014. The landlord testified that the tenant did not pay rent, again, of \$900.00 on January 1, 2015. The landlord testified that the tenant has been consistently late in paying rent. The landlord testified that he attempted to speak to the tenant about paying the outstanding rental amounts. The landlord testified that, when he spoke to the tenant about unpaid rent, the tenant said, "you'll have to try to get me out".

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not pay the December 2014 or January 2015 rent after receiving the 10 Day Notice on January 2, 2015. The landlord testified that, after receiving no payment or promise of payment, he applied for an Order of Possession.

The landlord has also applied for a monetary award of \$2700.00 for the months of December 2014, January 2015 and February 2015. The landlord testified that, given the

date of this hearing and the approaching end of the month, the landlord will be unable to serve the tenant so that he vacates the unit before February 1, 2015. The landlord also testified that he cannot predict the state of the rental unit or precisely when he will be able to list and re-rent the rental unit.

Analysis

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 has no right to deduct rent in this matter. Further, he did not attend this hearing to testify about payment or attempt to resolve the issue of outstanding rent with the landlord.

Order of Possession: The tenant failed to pay the December 2014 and the January 2015 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 his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by the corrected effective date of January 12, 2015. 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.

Monetary Order for Rental Arrears: I find that the landlord is entitled to receive an order for unpaid rent for December 2014, January 2015 and half of February 2015. The landlord testified that he is unlikely to be in a position to rent the premises for February 1, 2015, as he cannot predict whether the premises will be clean and he will not have an order requiring the tenant to vacate before February 1, 2015. I accept this uncontested evidence offered by the landlord with respect to re-renting the unit. I am issuing the attached monetary order that includes the landlord’s application for \$2700.00 in unpaid rent for December 2014 and January 2015, and the anticipated loss of rent for February 2015. The landlord has not sought any late fees as a part of this application.

Security Deposit: The landlord testified that he continues to hold a security deposit of \$450.00, plus interest from July 11, 2014 to the date of this decision for this tenancy. I will allow the landlord to retain the security deposit plus any interest in partial satisfaction of the monetary award. There is no interest payable for this period of time.

Filing Fee: 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 am granting the landlords an Order of Possession to be effective two days after notice is served to 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.

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

Rental Arrears for December 2014	\$900.00
Rental Arrears for January 2015	900.00
Rental Loss for February 2015	900.00
Less Security Deposit and Interest (\$450.00 plus no interest)	-450.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$2300.00

The landlord is provided with formal Orders in the above terms. Should the tenant(s) 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: January 30, 2015

Residential Tenancy Branch

