



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 for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- recovery of his filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 0946 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's son (the agent) provided evidence on behalf of the landlord.

The agent testified that he served the tenant with the dispute resolution package on 12 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's spouse with the 10 Day Notice on 1 December 2014. 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? Is the landlord entitled to recover his filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, 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 February 2014, the tenant began occupying the rental unit. In February 2014, the tenant provided a security deposit to the landlord of \$750.00. There is no written tenancy agreement for this tenancy. Monthly rent of \$1,500.00 is due on the first.

On 1 December 2014, the landlord served the 10 Day Notice to the tenant. The 10 Day Notice was dated 1 December 2014 and set out an effective date of 10 December 2014. The 10 Day Notice set out that the tenant failed to pay \$3,000.00 in rent that was due on 1 December 2014. The rental arrears included \$1,500.00 from November and \$1,500.00 from December.

The landlord claims for rental arrears totaling \$4,500.00:

Item	Amount
Unpaid November Rent	\$1,500.00
Unpaid December Rent	1,500.00
Unpaid January Rent	1,500.00
Total Monetary Order Sought	\$4,500.00

The agent testified that the landlord has not received any payments from the tenant towards November, December, or January's rent.

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 landlord issued the 10 Day Notice on 1 December 2014. This was too early to issue the notice for rent due 1 December 2014. At the hearing, the landlord's agent asked to amend the 10 Day Notice to remove December's rent. Subsection 68(2) of the Act allows me to amend a notice given under the Act that does not comply with the Act. In this case, the landlord mistakenly included December's rent on the 10 Day Notice. This mistake does not go to the substance of the 10 Day Notice, that is, a 10 Day Notice could have still been validly issued on 1 December 2014 as November's rent was outstanding. For these reasons, I am exercising my discretion to amend the 10 Day Notice to remove December's rent.

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 10 December 2014. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

At the hearing, the agent asked to amend the application to include January's rent. As the tenant reasonably ought to have known that this amount was owed to the landlord, I have allowed the amendment as there is no prejudice to the tenant.

The landlord has provided sworn and uncontested testimony that the tenant has unpaid rental arrears totaling \$4,500.00. 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.

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.

The landlord testified that he continued to hold the tenant's \$750.00 security deposit, plus interest, paid in February 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 \$3,800.00 under the following terms:

Item	Amount
Unpaid November Rent	\$1,500.00
Unpaid December Rent	1,500.00
Unpaid January Rent	1,500.00
Recovery of Filing Fee	50.00
Offset Security Deposit	-750.00
Total Monetary Order	\$3,800.00

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: January 14, 2015

Residential Tenancy Branch

