



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 landlords' 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 the filing fee for this application from the tenant pursuant to section 72.

The tenant did not appear although the 9:30 a.m. teleconference continued until 9:46 p.m. The landlords' agent ("the landlord") attended and 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 served to the tenant by posting it on the tenant's door on December 3, 2014. The landlord gave sworn, undisputed testimony that he served the tenant with the Application for Dispute Resolution hearing package by registered mail on December 23, 2014. I accept that the tenant was deemed served with the 10 Day Notice and the Application for Dispute Resolution hearing package.

Issues to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a monetary award for unpaid rent arising out of this tenancy?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord gave evidence that the original agreement for the premises began on September 1, 2012. This one year fixed term tenancy continued as a month to month

rental after August 31, 2013. The rental amount for this unit is \$860.00. The landlord testified that he continued to hold the \$450.00 security deposit that the tenant paid on August 30, 2012.

The landlord has applied for an Order of Possession for unpaid rent for the month of December 2014. The landlord testified that the tenant did not pay rent of \$860.00 due on December 1, 2014. The landlord testified that the tenant also did not pay January rent on January 1, 2015. Prior to this hearing, on January 7, 2015, the tenant paid \$1000.00 towards his rental arrears. He was provided a receipt that read "for use and occupancy only" and was advised that acceptance of the payment was not necessarily a reinstatement of his tenancy. The landlord testified that there have been late payments by the tenant for the months of September 2014 and November 2014. The landlord testified that, over that time period, the co-tenant moved out of the rental unit and the tenant is now failing to make his full rental payments on time.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not pay the December rent after receiving the 10 Day Notice on December 6, 2014, 3 days after it was posted in his rental unit door. After the expiration of that 10 Day period, and 5 more days, the landlord applied for an Order of Possession.

The landlord is also applying for a monetary award of \$790.00 for the outstanding rental arrears for the months of December 2014 and January 2015. As well, the landlord seeks a \$20.00 late fee for December 2014. The landlord referred to the rental agreement, provided in documentary evidence by the landlords, that includes a prescribed \$20.00 late fee. The landlord specified that he does not seek a late charge with respect to January 2015 rent.

Analysis

Order of Possession: The tenant failed to pay the December rent within five days of receiving the 10 Day Notice to End Tenancy. The landlord testified that a payment of \$1000.00 has been made by the tenant towards his rental arrears in January 2015. However, pursuant to section 26 of the *Act*, the tenant is required to pay the full rental amount at the date and time outlined in his tenancy agreement. He has not done so in this case. By failing to pay the full amount of the rent on its due date or within 5 days of receiving the 10 Day Notice to End Tenancy, the tenant has still failed to take the appropriate steps pursuant to section 46(5) of the *Act*.

The tenant also 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 December 16, 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. 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 in December 2014 and January 2015. I am issuing the attached monetary order that includes the landlord's application for \$720.00 in unpaid rent remaining for December 2014 and January 2015.

The landlord also applied for \$20.00 in fees for late payment of rent in December 2014. He provided copies of the written tenancy agreement which established this late payment fee. I find that the landlord is entitled to a \$20.00 late fee for the month of December 2014.

Security Deposit: The landlord testified that he continues to hold a security deposit of \$450.00 plus any interest from September 1, 2012 to the date of this decision for this tenancy. No interest is applicable for this time period. I will allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

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	\$860.00
Rental Arrears for January 2015	860.00
Late Payment Fee for December 2014	20.00

Payment by tenant, for use and occ only	-1000.00
Less Security Deposit and Interest (\$450.00 plus 0 interest)	-450.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$340.00

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 22, 2015

Residential Tenancy Branch

