



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The tenant applied for cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice") pursuant to section 46 of the *Act*. The landlord applied 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 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 was posted on the tenant's door on December 2, 2014. I accept that the tenant was duly served with the 10 Day Notice. On receiving the 10 Day Notice, the tenant testified that he personally served the landlord with his Application for Dispute Resolution package on December 5, 2014. The landlord confirmed receipt of this package. I accept that the landlord was duly served with the tenant's dispute resolution package.

The landlord gave sworn testimony and documentary evidence in the form of a receipt and tracking number that he served the tenant with the Application for Dispute Resolution hearing package on December 15, 2014. The tenant did not dispute this evidence and stated he was prepared to proceed with the hearing of both applications.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

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 as a one year fixed term tenancy on May 1, 2005. The rental amount of \$602.00 is payable on the first of each month. The landlord continues to hold a security deposit in the amount of \$290.00 paid by the tenant on April 23, 2005. The tenant continues to reside in the rental unit.

The landlord has applied for an Order of Possession for unpaid rent for the month of November and December 2014. The landlord testified that the tenant did not pay rent of \$602.00 due on November 1, 2014 and, again, did not pay rent of \$602.00 due on December 1, 2014. The landlord also provided documentary evidence to support his testimony that the tenant continued paid the rent late and did not pay the full rental amount. From May 2014 to present, the tenant did not pay the full rent on the first of the month. From May 2014 to present, the tenant did not always pay the full rent within the rental month. For the months of November and December, the tenant paid no rent within the rental month. The landlord referred to the documentary evidence indicating an outstanding amount of \$ 1246.00 from months prior to November 1, 2014.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not pay the November rent after receiving the 10 Day Notice on December 2, 2014. After the expiration of the 10 Day period for the tenant to respond, the landlord applied for an Order of Possession.

The landlord is also seeking a monetary award of \$1246.00 for the months previous to November 2014, and for November 2014 and December 2014.

The tenant testified that he was often unable to pay the full rental amount at the beginning of the month but that he always paid his rent (eventually). He also testified that he had not paid rent for November or December 2014. He acknowledged an outstanding balance of unpaid rent totalling \$ 1246.00. The tenant provided reasons, based on an injury and his job status, that he had been unable to pay his rent.

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 is required to pay his full rent on the day that it is due according to his tenancy agreement. The tenant has not done so for most

of 2014. His rent remains unpaid for November and December 2014. He continues to reside in the rental unit.

The tenant applied to cancel that landlord's 10 Day Notice to end tenancy. It is the landlord's burden to prove that the notice to end tenancy is justified. Based on the evidence provided by both parties in testimony as well as the landlord's documentary evidence, the tenant has not paid rent. The landlord has shown, on a balance of probabilities that there are sufficient grounds to end this tenancy, particularly the non-payment of rent.

ORDER OF POSSESSION: I find that the landlord is entitled to an Order of Possession. The landlord sought an order dated February 28, 2014. 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 on the date required, the landlord may enforce this Order in the Supreme Court of British Columbia.

MONETARY ORDER: I find that the landlord is entitled to receive an order for unpaid rent prior to November, in November 2014 and in December 2014 as well as January 2015. I am issuing the attached monetary order that includes the landlord's application for \$1246.00 in unpaid rent for rent prior to November, in November 2014 and in December 2014. Based on the evidence of both parties that the tenant continues to reside in the rental unit and has not paid rent, I include unpaid rent for January 2015.

SECURITY DEPOSIT: The landlord testified that he continues to hold a security deposit of \$290.00. I will allow the landlord to retain the security deposit *plus interest* in partial satisfaction of the monetary award. The interest from the date of payment of this security deposit until the date of this decision is \$17.71.

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 dismiss the tenant's application to cancel the 10 Day Notice to End Tenancy.

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 by February 28, 2014 as 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 prior to November 2014	\$42.00
Rental Arrears for November 2014	602.00
Rental Arrears for December 2014	602.00
Rental Arrears for January 2015	602.00
Less Security Deposit and Interest (\$290.00 plus \$17.71 interest)	-307.71
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$1590.29

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 09, 2015

Residential Tenancy Branch

