



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPR, MNSD, 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;
- 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 his filing fee for this application from the tenant pursuant to section 72.

While the landlord did not check the box indicating he was applying for a monetary order, he did indicate that he sought a monetary order for \$775.00 for unpaid rent. I accept that the landlord is applying for a monetary order in the amount of \$775.00 despite the box not being marked.

This hearing also dealt with the tenant's application pursuant to the Act for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

The tenant and his advocate appeared at the hearing. The landlord also appeared. The parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord testified that he served the tenant with the dispute resolution package on 24 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 the dispute resolution package pursuant to sections 89 and 90 of the Act.

The landlord did not dispute receiving the tenant's dispute resolution package.

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 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? Is the 1 Month Notice valid?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on or about 1 February 2013. Monthly rent of \$775.00 is due on the first. At the beginning of the tenancy the landlord collected a security deposit of \$387.50.

The landlord testified that he served the tenant with the 10 Day Notice on 10 December 2014 by posting it to the tenant's door. The landlord testified that this posting was witnessed by his coworker, F. On the basis of this evidence, I am satisfied that the tenant was deemed served with the 10 Day Notice on 13 December 2014 pursuant to sections 88 and 90 of the Act.

The 10 Day Notice was dated 10 December 2014 and was given for \$775.00 in unpaid rent. The 10 Day Notice set out an effective date of 20 December 2014. The landlord received three payments from the Province towards the tenant's rent, each in the amount of \$375.00. I find that receipt of these amounts from the government did not constitute reinstatement of the tenancy.

The current rental arrears are \$425.00:

Item	Amount
December Rent	\$775.00
January Rent	775.00
Payment from Province (3 x \$375.00)	-1,125.00
Total Rent Arrears	\$425.00

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 tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. While the tenant has applied to cancel an earlier 1 Month 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 23 December 2014, the corrected effective date of the 10 Day Notice. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The landlord has provided sworn and agreed to testimony that the tenant has unpaid rental arrears totaling \$425.00. I find that the landlord has proven the rent arrears.

The landlord testified that he continued to hold the tenant's \$387.50 security deposit, plus interest, paid at the beginning of the tenancy. Over that period, no interest is payable. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

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.

As this tenancy is ending, I decline to consider the tenant's application as it is moot.

Conclusion

The landlord is given a formal order of possession which must be served on the tenant(s). If the tenant(s) do(es) not vacate the rental unit within the two days required, the landlord may enforce this order in the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$87.50 under the following terms:

Item	Amount
Unpaid Rent Arrears	\$425.00
Retained Security Deposit	-387.50
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$87.50

The landlord is provided with these orders in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: January 09, 2015

Residential Tenancy Branch

