



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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, pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, 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 attend this hearing although it lasted approximately 20 minutes. 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 gave sworn testimony that she served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, dated November 16, 2014 ("10 Day Notice"), by way of registered mail on November 18, 2014. The landlord attached a signed proof of service, as well as a Canada Post customer receipt and tracking number, to confirm this mailing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on November 23, 2014, five days after its registered mailing.

The landlord testified that she served the tenant with the Application for Dispute Resolution hearing package ("Application") on January 12, 2015, by way of registered mail. The landlord provided a Canada Post customer receipt and tracking number after the hearing, at my request, as she did not provide this information with her Application. The Canada Post website indicates that the tenant received and signed for the package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the Application on January 17, 2015, five days after its registered mailing.

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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

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

Background and Evidence

The landlord testified that this month to month tenancy began on December 1, 2013. Monthly rent in the amount of \$800.00 is payable on the 1st day of each month. A security deposit of \$700.00 was paid by the tenant on June 22, 2014 and the landlord continues to retain this deposit. I note that this security deposit amount is contrary to section 19 of the *Act*, which only permits one half month's rent to be collected by the landlord for a security deposit.

The landlord stated that her brother owns the rental unit and that she manages it as the landlord. A written tenancy agreement, which names this landlord on the agreement, was provided with the landlord's Application. The landlord testified that the tenant continues to reside in the rental unit.

The landlord stated that rent in the amount of \$700.00 is unpaid for November 2014. The landlord testified that rent in the amount of \$800.00 is unpaid for each of December 2014 and January 2015. The landlord seeks a monetary order in the total amount of \$2,300.00 for unpaid rent.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$800.00 was due on November 1, 2014, for November 2014 rent. The notice indicates an effective move-out date of November 30, 2014. The landlord confirmed that only \$100.00 was paid by the tenant around December 1, 2014, towards this outstanding rent balance and that no further payments have been made by the tenant, since that date.

The landlord stated that she has unsuccessfully attempted to contact the tenant by way of telephone, text messages, and knocking on his rental unit door, in order to collect rent. The landlord indicated that she has not received any response from the tenant. The landlord provided a signed letter, dated November 14, 2014, which she left under the tenant's rental unit door on the same date. The letter indicates that the parties agreed to meet on November 3, 2014 so that the tenant could pay rent, the tenant did not show up on that date, and the tenant did not answer his door when the landlord went to the rental unit. The letter further requests outstanding rent by November 15,

2014 or the tenant would be served with an eviction notice. The letter states that the tenant has not abided by the tenancy agreement to pay rent.

The landlord is also seeking to recover the filing fee of \$50.00 for this Application from the tenant.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not appear. The tenant failed to pay the full rent due on November 1, 2014, within five days of being deemed to have received the 10 Day Notice. The tenant only made a partial payment of \$100.00 around December 1, 2014, towards this outstanding rent balance, which did not reinstate the tenancy. No further rent payments have been made by the tenant. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on December 3, 2014, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by December 3, 2014. As this has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

The landlord provided undisputed evidence that the tenant failed to pay \$2,300.00 in rent from November 2014 to January 2015. Therefore, I find that the landlord is entitled to rental arrears outstanding in the amount of \$2,300.00 against the tenant.

The landlord testified that she was also seeking to recover unpaid rent of \$800.00 for February 2015. However, I advised the landlord that her application was premature, as this rent is not due until February 1, 2015, a date which has not yet occurred at the time of this hearing. Therefore, the landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, regarding February 2015 rent, is dismissed with leave to reapply.

The landlord testified that she continues to hold the tenant's security deposit of \$700.00. Although the landlord did not apply to retain the tenant's security deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that she is entitled to recover the \$50.00 filing fee paid for the Application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$1,650.00 against the tenant as follows:

Item	Amount
November 2014 Rent	\$800.00
December 2014 Rent	800.00
Less partial payment on December 1, 2014	-100.00
January 2015 Rent	800.00
Less Security Deposit	-700.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$1,650.00

The landlord is provided with a monetary order in the amount of \$1,650.00 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, regarding February 2015 rent, is dismissed with leave to reapply.

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

