



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRISTOL ESTATES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, 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;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain all or a portion of the tenant's security and pet damage deposits in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The landlord's agent, DS ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord's agent, who is the building resident manager, MM ("MM") also attended the hearing but did not provide any testimony.

The landlord gave sworn testimony that she observed MM serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, dated January 3, 2015 ("10 Day Notice"), by posting it to the tenant's rental unit door. The tenant confirmed receipt of the 10 Day Notice on January 3, 2015. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on January 3, 2015.

The landlord testified that she observed MM personally serve the tenant with the landlord's Application for Dispute Resolution hearing package ("Application") on January 15, 2015. The tenant confirmed receipt of the landlord's Application. In accordance with section 89 of the *Act*, I find that the tenant was duly served with the landlord's Application, as declared by the parties.

During the hearing, the landlord withdrew its claim to retain the tenant's security and pet damage deposits. Accordingly, this portion of the landlord's application is withdrawn.

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?

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

Background and Evidence

The landlord testified that this tenancy began on July 1, 2014 for a fixed term of one year. Monthly rent in the amount of \$950.00 is payable on the 1st day of each month. A security deposit of \$475.00 and a pet damage deposit of \$475.00 were paid by the tenant on May 16, 2014 and the landlord continues to retain these deposits. A written tenancy agreement was provided with the landlord's Application.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$950.00 was due on January 1, 2015. The notice indicates an effective move-out date of January 12, 2015. The landlord confirmed that payments totalling \$750.00 were made by the tenant towards January 2015 rent as follows: \$100.00 each on January 9, 16 and 22, 2015 and \$450.00 on January 20, 2015. Both parties agreed that the tenant still owes an outstanding rent balance of \$200.00 for January 2015.

The landlord seeks \$950.00 in rent and \$25.00 in late fees for each of January and February 2015. The landlord indicated that the late fees of \$25.00 per month were agreed upon by the tenant in clause 12 of the tenancy agreement. The landlord also seeks to recover the filing fee of \$50.00 from the tenant.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. The tenant agreed to pay the landlord the total amount of \$1,150.00 towards rent for this tenancy, according to the following schedule:
 - a. \$950.00 by February 15, 2015, which includes \$200.00 for the outstanding rent balance for January 2015 and \$750.00 for partial February 2015 rent;
 - b. \$200.00 by February 20, 2015, which includes the remaining balance owed for February 2015 rent;
2. Both parties agreed that this tenancy will continue in the event that the tenant abides by the monetary terms of this settlement agreement as outlined above. In that event, the landlord agreed to withdraw the 10 Day Notice, dated January 3, 2015.
3. Both parties agreed that this tenancy will end by 1:00 p.m. on February 21, 2015 by which time the tenant will have vacated the rental unit, only if the tenant does not abide by the monetary terms of this settlement agreement as outlined above by February 20, 2015;
4. The landlord agreed to waive the late fees of \$50.00 total for the January 2015 and February 2015 late rent payments by the tenant;
 - a. Both parties agreed that the landlord's waiver of the above late fees are a one-time exception for this settlement agreement only;
5. The landlord agreed to bear the cost of the \$50.00 filing fee for the landlord's application.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties gave verbal sworn affirmation at the hearing that they agreed to the above terms, which settle all aspects of this dispute.

Conclusion

To give effect to the settlement reached between the parties, and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant fails to abide by the monetary terms of the above agreement **and** fails to vacate the rental premises by 1:00 p.m. on February 21, 2015. The landlord is provided with this Order in the above terms and the tenant must be served with this Order in the event that the tenant does not abide by the monetary terms of the above agreement and does not vacate the premises by 1:00 p.m. on February 21, 2015. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In the event that the tenant abides by the monetary terms of this settlement agreement, I find that the landlord's 10 Day Notice, dated January 3, 2015, is cancelled and no force or effect. In that event, this tenancy continues until it is ended in accordance with the *Act*.

In order to implement the above settlement reached between the parties, and as advised to both parties during the hearing, I issue a monetary Order in the landlord's favour in the amount of \$1,150.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenant does not abide by the terms of the above monetary agreement. The landlord is provided with this Order in the above terms and the tenant must be served with a copy of this Order as soon as possible after a failure to comply with the terms of the above monetary agreement. 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 must bear the cost of its own filing fee of \$50.00 for this Application.

The landlord's application to retain all or a portion of the tenant's security and pet damage deposits in partial satisfaction of the monetary order, is withdrawn.

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: February 5, 2015

Residential Tenancy Branch

