



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 718009 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MND, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlords pursuant to the *Residential Tenancy Act* ("the Act") for orders as follows:

1. An Order of Possession for unpaid rent pursuant to section 55.
2. A monetary order for unpaid rent, loss and damage pursuant to section 67.
3. An Order to be allowed to keep all or part of the security deposit pursuant to section 38.
4. To recover the filing fee from the tenant for the cost of this application pursuant to section 72.

The tenant did not appear. The representative for the landlord attended ("the landlord") 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 personally served to the tenant on January 2, 2015. The landlord gave sworn testimony that he served the tenant with the Application for Dispute Resolution hearing package on January 9, 2015 by sending it registered mail. I accept that the tenant was duly served with the 10 Day Notice January 2, 2014 and deemed served January 14, 2014 with the Application for Dispute Resolution hearing package (5 days after mailing).

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 and losses arising out of this tenancy?

Are the landlords entitled to retain all or a part of the security deposit to satisfy any monetary award?

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 rental agreement for the premises began on April 1, 2014 as a month to month tenancy. The rental amount for this unit was established at \$3000.00. The landlord testified that he continued to hold the \$1500.00 security deposit that the original tenant paid on April 1, 2014.

The landlord has applied for an Order of Possession for unpaid rent for the months of November and December 2014 as well as January 1, 2015. The landlord testified that the tenant did not pay rent of \$3000.00 due on November 1, 2014 or \$3000.00 rental amount due on December 1, 2014. The landlord testified that the tenant did not pay rent of \$3000.00 due on January 1, 2015 and has paid no rental arrears as of the date of this hearing. This testimony was undisputed as the tenant did not attend this hearing.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not pay the outstanding rental amounts from November or December 2014 or January 2015 after receiving the 10 Day Notice on January 2, 2015. After 7 days, the landlord applied for an Order of Possession.

The landlord is also seeking a monetary award of \$12000.00 for the months of November 2014, December 2014, January 2015 and February 2015. The landlord testified that he will not be able to have the tenant vacate for the first of February as of this date. The landlord also provided sworn, undisputed testimony that "at least 9 windows are broken" on the premises as well as broken toilets and plumbing. He described the unit in a state that would require substantial repair before it could be re-rented.

Analysis

Order of Possession: The tenant failed to pay the November 2014, December 2014 and January 2015 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant 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 her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by January 12, 2015. 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, Loss and Damage: I find that the landlord is entitled to receive an order for unpaid rent for November and December 2014 as well as January 2015. The landlord testified that he is unlikely to be in a position to rent the premises for the month of February, as considerable cleaning and repairs to the premises will be required following this tenancy. The landlord testified that the earliest that the premises will be available for rent will be March 1, 2015. I accept this uncontested evidence offered by the landlord. I am issuing the attached monetary order that includes the landlord's application for \$12000.00 in unpaid rent for November and December 2014 and January and February 2015.

Security Deposit: The landlord testified that he continues to hold a security deposit of \$1500.00 plus interest from April 1, 2014 to the date of this decision for this tenancy. I will allow the landlord to retain the security deposit in partial satisfaction of the monetary award. There is no interest payable for this period of time.

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 November 2014	\$3000.00
Rental Arrears for December 2014	3000.00
Rental Arrears for January 2015	3000.00
Compensation for February 2015 rent (unable to re-rent due to damage)	3000.00
Less Security Deposit and Interest (\$1500.00 plus 0 interest)	-1500.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$10550.00

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: February 4, 2015

Residential Tenancy Branch

