



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Fernbrae Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This is an application filed by the landlord for an order of possession and a monetary order for unpaid rent, to retain the security deposit and recovery of the filing fee.

The landlord attended the hearing by conference call and gave undisputed testimony. The tenant did not attend or submit any documentary evidence. The landlord states that the tenant was served with the notice of hearing package and the submitted documentary evidence in person on January 16, 2015.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order?
Is the landlord entitled to retain the security deposit?

Background and Evidence

The landlord states that there is no signed tenancy agreement, but that the monthly rent is \$1,100.00 payable on the 1st day of each month and a security deposit of \$550.00 was paid.

The landlord states that the tenant was served with a 10 day notice to end tenancy issued for unpaid rent dated January 4, 2015 in person. The landlord states that he had the tenant sign for receipt of the notice at the bottom of the page. The landlord has submitted a copy of the notice as confirmation.

The notice states that the tenant failed to pay rent of \$1,100.00 that was due on January 1, 2015 and displays an effective end of tenancy date of January 30, 2015.

The notice also states that the tenant failed to pay utilities in the amount of \$375.88 following a written demand on December 18, 2014. The landlord state that a copy of the utility bill dated December 18, 2014 was given to the tenant on December 18, 2014 and that a verbal demand was made along with it.

The landlord has submitted a copy of tenant rental ledger which details the amounts owed by the tenant in support of the landlord's claim.

The landlord seeks an order of possession as the tenant is still occupying the rental unit without paying any rent. The landlord also seeks a monetary order of \$1,475.88 which consists of unpaid rent of \$1,100.00 and utilities of \$375.88. The landlord also seeks to retain the \$550.00 security deposit to offset their monetary claims.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant failed to pay rent when due.

I accept the undisputed evidence of the landlord and find that the tenant was properly served with the 10 day notice to end tenancy issued for unpaid rent dated January 4, 2015 in person and having the tenant sign in receipt of the notice. The tenant did not pay the rent in full within the allowed timeframe nor did the tenant make an application for dispute resolution to dispute the notice. The tenant is conclusively presumed to have accepted that the tenancy was at an end.

The landlord is granted an order of possession. The order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia an enforced as an order of that Court.

As for the monetary claim, I find that the tenant has failed to pay the amount owed for rent and utilities as claimed by the landlord's 10 day notice dated January 4, 2015. The tenant has also not filed an application for dispute resolution to dispute the notice. The

landlord has established a monetary claim of \$1,475.88 based upon the undisputed evidence of the landlord for unpaid rent and utilities.

The landlord is also entitled to recovery of the \$50.00 filing fee.

Pursuant to Policy Guideline #17, Security Deposit and Set Off which states,

The *Residential Tenancy Act* provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the arbitration fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

I order that the landlord retain the \$550.00 security deposit in partial satisfaction of the claim and I grant a monetary order under section 67 for the balance due of \$925.88. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$925.88. The landlord may retain the security deposit.

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 04, 2015

Residential Tenancy Branch

