



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTENNIAL APARTMENTS/RPM INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

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; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant did not attend this hearing, although I waited until 0942 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The agent testified that he served the tenant with the dispute resolution package on 20 January 2015 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 dispute resolution package pursuant to sections 89 and 90 of the Act.

The landlord provided documentary evidence that the tenant was served with the 10 Day Notice at 1100 on 22 December 2014 by posting the notice to the tenant's door. The landlord provided me with a witnessed proof of service document. On the basis of this evidence, I am satisfied that the tenant was deemed served with 10 Day Notice pursuant to sections 88 and 90 of the Act.

Preliminary Issue – Amendment to Landlord's Application

Paragraph 64(3)(c) allows me to amend an application for dispute resolution.

The agent asked that I exercise my discretion to amend the landlord's application to include the legal name of the landlord. I granted this amendment as there is no undue prejudice to the tenant.

At the hearing, the landlord asked to amend this application to include unpaid rent for January and February. As the tenant reasonably ought to have known that these amounts were owed, I have allowed the amendment as there is no undue prejudice to the tenant.

The landlord did not ask me to amend to include October's rent arrears so I will not make any such amendment.

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?

Background and Evidence

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

In April 2013, the tenant began occupying the rental unit. The tenant and landlord signed a tenancy agreement on 15 March 2013. Monthly rent of \$930.00 is due on the first. The agent testified that the landlord continues to hold the tenant's security deposit of \$465.00, which was collected at the beginning of this tenancy.

On 22 December 2014, the landlord issued the 10 Day Notice to the tenant. The 10 Day Notice was dated 22 December 2014 and set out an effective date of 1 January 2015. The 10 Day Notice set out that the tenant failed to pay \$1,860.00 in rent that was due on 1 November 2014. The rental arrears included \$930.00 from November and \$930.00 from December rent.

The landlord provided me with a copy of the tenant's ledger. The ledger was dated 27 January 2015. The ledger sets out that the tenant had rental arrears of \$2,425.00, which includes rent arrears for October and late fees.

On 31 December 2014, the tenant paid \$700.00 towards his rental arrears. On 27 January 2015, the tenant paid \$700 towards his rental arrears. The landlord issued receipts to the tenant that these payments were received on the basis of "use and occupancy only". The landlord testified that he has not received any payments since this last payment.

The landlord claims for rental arrears totaling \$2,320.00:

Item	Amount
Unpaid November Rent	\$930.00
Unpaid December Rent	930.00
Unpaid January Rent	930.00
Unpaid February Rent	930.00
Payment Received for Use and Occupancy (31 December 2014)	-700.00
Payment Received for Use and Occupancy (27 January 2014)	-700.00
Total Monetary Order Sought	\$2,320.00

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.

By issuing receipts for "use and occupancy only" the landlord has not waived its rights in respect of the rent or the 10 Day Notice. The tenant failed to pay the outstanding rent within five days of receiving the 10 Day 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 4 January 2015, 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 uncontested testimony that the tenant has unpaid rental arrears totaling \$2,320.00. I find that the landlord has proven his entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent.

The agent testified that the landlord continued to hold the tenant's \$465.00 security deposit, plus interest, paid in April 2013. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,855.00 under the following terms:

Item	Amount
Unpaid November Rent	\$930.00
Unpaid December Rent	930.00
Unpaid January Rent	930.00
Unpaid February Rent	930.00
Payment Received for Use and Occupancy (31 December 2014)	-700.00
Payment Received for Use and Occupancy (27 January 2014)	-700.00
Less Retained Security Deposit	-465.00
Total Monetary Order	\$1,855.00

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

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: February 05, 2015

Residential Tenancy Branch

