



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 2 & 2 HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* ("the Act"). The tenant ("Tenant WT") and his occupant ("Occupant JK") applied for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice") pursuant to section 46.

The landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Tenant WT was assisted by his girlfriend who is an occupant in the rental unit. At the start of the hearing, the landlord acknowledged that Occupant JK is not formally a tenant within the terms of tenancy agreement for this rental unit and he withdrew his application with respect to Occupant JK, proceeding only with respect to the named tenant, Tenant WT.

The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was personally served to the Tenant WT on January 13, 2015. Tenant WT testified confirming that he received the 10 Day Notice but that he believed it was after January 13, 2015. The landlord testified and provided documentary evidence that service occurred on January 13, 2015 and that the service was witnessed at that time. The landlord gave sworn testimony that he personally served Tenant WT with the Application for Dispute Resolution hearing package on January 21, 2015. The tenant confirmed receipt of this package. I accept that Tenant WT was duly served with both the 10 Day Notice and the Application for Dispute Resolution hearing package.

Tenant WT testified that he served the landlords with his Dispute Resolution hearing package by registered mail on January 26, 2015. The landlord confirmed receipt of this package on January 29, 2015. Based on the testimony of the parties, I find the landlord served with the tenants' Dispute Resolution hearing package on January 29, 2015.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, 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 gave evidence that this tenancy began January 1, 2014. The rental amount for this unit is \$640.00. The landlord testified that he continued to hold the \$320.00 security deposit that Tenant WT paid at the beginning of the tenancy.

The landlord has applied for an Order of Possession for unpaid rent for the month of January 2015. The landlord testified that the tenant did not pay rent of \$640.00 due on January 1, 2015. The landlord testified that there has been a lengthy history of late payment of rent by the tenant. The landlord provided undisputed sworn testimony that the tenant paid rent late, most recently in October, November, and December 2014. He further testified that the tenant continues to reside in the rental unit. Tenant WT confirmed, in his testimony that he had not paid January or February rent and that he continues to reside in the rental unit with his girlfriend.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenants did not pay the January rent after receiving the 10 Day Notice on January 13, 2015. The landlord testified that Tenant WT provided promises that he would pay his rental arrears but that, to the date of this hearing, he had been unable to do so. The landlord testified that Tenant WT stated there was no point in paying the rent now that he was going to be evicted. After the expiration of that 10 Day period, the landlord applied for an Order of Possession.

Tenant WT testified that he wants to stay in the rental unit. He testified that he is usually only one or two days late with his rental payments. He testified that he tries his best to call the landlord when rent is going to be late. He testified that he has some very serious health issues and he has done his best to be a good tenant. Occupant JK provided evidence with respect to the tenant's health issues but also acknowledged the

outstanding rental amounts as well as the landlord's patience with regard to those payments.

The landlord is also seeking a monetary award of \$1280.00 for the unpaid rent in January and February 2015.

Analysis

When a tenant applies to cancel a notice to end tenancy, the burden shifts to the landlord to justify the issuance of a notice to end tenancy and to support the grounds for the notice.

The landlord provided undisputed testimony that the tenant failed to pay the January 2015 rent within five days of receiving the 10 Day Notice to End Tenancy. While the tenant did make an application for dispute resolution, the tenant did not make that 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 his tenancy on the effective date of the notice. In this case, this required the tenant and his occupant to vacate the premises by January 23, 2015. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

I find that the landlord is entitled to receive a monetary award for unpaid rent for January 2015 and February 2015. I accept the uncontested evidence offered by the landlord that the tenants have not met their obligations regarding rent payments. I am issuing the attached monetary order that includes the landlord's application for \$1280.00 in unpaid rent for January and February 2015.

The landlord testified that he continues to hold a security deposit of \$320.00 plus any interest from December 2013 to the date of this decision for this tenancy. There is no interest payable for this period of time. I will allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

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 and his occupant do 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 landlord as follows:

Rental Arrears for January 2015	\$640.00
Rental Arrears for February 2015	640.00
Less Security Deposit (no Interest)	-320.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$1010.00

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 17, 2015

Residential Tenancy Branch

