



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given full opportunity to present all relevant evidence and testimony in respect to the claims made herein, and to make relevant prior submission to the hearing and fully participate in the conference call hearing. The style of cause in respect to the name order of the tenant and the location of the rental unit on the residential property was corrected in concert with the testimony of the parties. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The landlord testified they provided all of their document evidence to the tenant by posting it on their door together with the notice of hearing on January 13, 2015. The landlord testified they served the tenant with all of the evidence provided to this hearing. The tenant denied receiving any document evidence. The tenant testified they did not provide any evidence.

I reserved a decision respecting the disputed service of evidence.

The tenant claims they made a cross-application for dispute resolution, however did not have a copy of the application and did not have a file number for the application. The tenant also did not know if they had served the landlord with their application. The hearing proceeded on the merits of the landlord's application.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The *undisputed* testimony is as follows. The tenancy began on November 01, 2014. Rent in the amount of \$900.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$450.00.

The *disputed* testimony is as follows. The landlord claims the tenant paid \$360.00 for November 2014 rent on November 17, 2014 and has not paid any rent since. The landlord claims they gave the tenant a 10 Day Notice to End tenancy for unpaid rent on December 02, 2014 stating the tenant owed \$1440.00 in unpaid rent as of December 01, 2014 and that the tenant failed to pay any of the rent. The landlord provided their wife as witness to posting the Notice on the tenant's door on December 02, 2014. The landlord further testified that on December 10, 2014 the tenant gave them a hand-written letter stating they were vacating December 30, 2014 because of their inability to pay the rent. The landlord testified the tenant also stated they were vacating for other reasons including various deficiencies of the rental unit. The landlord testified that on January 03, 2015 the landlord served the tenant with another Notice to End tenancy for non-payment of rent stating the tenant owed \$2340.00 which was not paid and the landlord filed their application for dispute resolution. The landlord provided their wife as witness to posting the Notice on the tenant's door on January 03, 2015. The landlord testified they provided all of the documents referenced above other than the Notice to end dated January 03, 2015, but including a copy of the tenancy agreement signed by both parties October 28, 2014.

The tenant testified that their rent is fully paid to date. They testified they have paid their rent in cash in full in the first several days of each month and it is current, but that the landlord has not provided receipts. The tenant claims they have photographs of the cash used to pay the rent and that the landlord is "lying". The tenant provided their partner and tenant as witness to always paying the rent in cash to the male landlord on the stated dates. They also denied the existence of the claimed hand-written note dated December 10, 2014, but that they instead provided the landlord a letter in January 2015 stating they were vacating at the end of January 2015 – although they have not.

Analysis

Based on the testimony of both parties I find that the landlord's testimony was matter of fact and unembellished and that the testimony of the actions and conduct of the landlord

make sense in response to the events described. Conversely, I find that the tenant's testimony was brief, one-worded and lacking information that clearly strung together their events. The tenant also failed to provide any supporting documents or information of their claims they paid the rent and their claimed application in response to the landlord's claims and application of unpaid rent. I therefore prefer the evidence of the landlord over that of the tenant's wherever there is a conflict – which in this matter the conflicting evidence amounts to near totality.

As a result, I find the tenant was served with a copy of the landlord's document evidence inclusive of a copy of the tenancy agreement and a 10 Day Notice to End Tenancy for Unpaid Rent dated December 02, 2014. I also accept the landlord's submission of a letter dated December 10, 2014 stated to have been written by the tenant bearing a signature matching the tenant's signature on the tenancy agreement – and, moreover, stating they had not paid the rent.

I find that the tenant was given a 10 Day Notice to End Tenancy for Unpaid Rent dated December 02, 2014 and I find that notice to be valid. I find the tenant has not paid the outstanding rent and has not applied for Dispute Resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

Based on the above I find that the landlord is entitled to an Order of Possession.

I also find that the landlord has established a monetary claim for unpaid rent. The landlord is also entitled to recovery of the filing fee. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

unpaid rent for November 2014	\$540.00
unpaid rent for December 2014	\$900.00
unpaid rent for January 2015	\$900.00
unpaid rent for February 2015	\$900.00
filing Fees	50.00
<i>Less Security Deposit</i>	<i>-450.00</i>
Total Monetary Award to landlord	\$2840.00

Conclusion

I grant an Order of Possession to the landlord effective 2 days from the day it is served on the tenant. The tenant must be served with this Order of Possession.

Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I Order that the landlord retain the security deposit of \$450.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$2840.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 03, 2015

Residential Tenancy Branch

