



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRISTOL ESTATES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

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;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing although it lasted approximately 17 minutes. The landlord's agent, DS ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord's witness "MM" testified at this hearing with respect to service of documents. The landlord confirmed that she had authority to represent the landlord company named in this application, as an agent at this hearing.

MM testified that he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, dated February 2, 2015, ("10 Day Notice"), by posting it to the tenant's rental unit door. The landlord testified that she witnessed this posting. A signed witness statement regarding this service, was provided with the landlord's Application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on February 5, 2015, three days after its posting.

The landlord testified that she personally served the tenant with the landlord's Application for Dispute Resolution hearing package ("Application") on February 13, 2015. MM testified that he witnessed this service. In accordance with section 89 of the *Act*, I find that the tenant was served with the landlord's Application on February 13, 2015.

During the hearing, the landlord withdrew the landlord's application for an Order of Possession for unpaid rent and for authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order. The landlord stated that she reached an agreement with the tenant prior to this hearing. The landlord stated that this agreement was reached only because the landlord filed an Application first. The landlord testified that she agreed to continue the tenancy with the tenant. The landlord stated that the tenant agreed to pay outstanding rent on March 13, 2015 and a further two weeks after that date. Accordingly, these portions of the landlord's application are withdrawn.

Issues to be Decided

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 testified that this tenancy began on August 1, 2013, for a fixed term of one year, after which it transitioned to a month to month tenancy. Monthly rent in the amount of \$650.00 is payable on the first day of each month. A security deposit of \$325.00 was paid by the tenant on August 3, 2013 and the landlord continues to retain this deposit. A written tenancy agreement was provided with the landlord's Application. The landlord testified that the tenant continues to reside in the rental unit.

The 10 Day Notice indicates an effective move-out date of February 11, 2015. The 10 Day Notice states that rent in the amount of \$740.00 was due on February 1, 2015. The landlord indicated that this amount included \$90.00 in unpaid rent for January 2015 and \$650.00 in unpaid rent for February 2015. The landlord stated that the tenant made a rent payment of \$650.00 on February 14, 2015. The landlord indicated that rent of \$650.00 is unpaid for March 2015. The landlord stated that the tenant has not made any further rent payments. The landlord seeks \$740.00 in unpaid rent.

The landlord also seeks \$50.00 total in late fees, pursuant to clause 12 of the tenancy agreement. This clause states that any late rent payments are subject to a charge of \$25.00 each. The landlord seeks \$25.00 for each of February and March 2015 for late rent payments. The landlord stated that she is not seeking a late fee of \$25.00 for January 2015.

The landlord also seeks to recover the \$50.00 filing fee for this Application from the tenant.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. As per section 26 of the Act, a tenant must pay rent when it is due under the tenancy agreement. Rent is due on the first day of each month for this tenancy. The landlord provided undisputed evidence that the tenant failed to pay rent of \$740.00 total for the period from January to March 2015. Therefore, I find that the landlord is entitled to \$740.00 in rental arrears for the above period.

The landlord testified that the tenant did not pay late fees of \$50.00 total for late rent payments during February and March 2015. In accordance with sections 7(1)(d) and 7(2) of the *Residential Tenancy Regulation*, the landlord is entitled to recover these late fees as they do not exceed \$25.00 for each late payment and they are provided for in clause 12 of the tenancy agreement. Accordingly, I find that the landlord is entitled to \$50.00 total for late fees.

The landlord withdrew a portion of her Application due to an agreement made prior to this hearing. This agreement was only reached after the landlord filed her Application. For the above reasons and because the landlord was successful in this Application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for the Application.

As the landlord withdrew the application for an order of possession based on a settlement reached between the parties, the landlord's 10 Day Notice, dated February 2, 2015, is cancelled and of no force or effect. This tenancy continues under the terms of the tenancy agreement, until it is ended in accordance with the Act.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$840.00 against the tenant as follows:

Item	Amount
Unpaid January 2015 Rent	90.00
February 2015 Rent	650.00
Less Rent Payment by Tenant on February 14, 2015	-650.00

March 2015 Rent	650.00
Late Fees for February and March 2015 Late Rent Payments (\$25.00 x 2 = \$50.00)	50.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Award	\$840.00

The landlord is provided with a monetary order in the amount of \$840.00 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application for an Order of Possession for unpaid rent and authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order, is withdrawn.

The landlord's 10 Day Notice, dated February 2, 2015, is cancelled and of no force or effect. This tenancy continues under the terms of the tenancy agreement, until it is ended in accordance with the *Act*.

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: March 11, 2015

Residential Tenancy Branch

