



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, MNDC, 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was personally served to the tenant on February 2, 2015 by posting the 10 Day Notice on his rental unit door. The tenant confirmed receipt of the 10 Day Notice. The landlord gave sworn testimony that she personally served the tenant with the Application for Dispute Resolution hearing package on February 12, 2015 when he attended the landlord's office. I accept that the tenant was duly served with the 10 Day Notice and the Application for Dispute Resolution hearing package.

Issues 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?

Is the landlord entitled to retain all or a portion of the tenant's security deposit towards any monetary award?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord gave evidence that the residential tenancy agreement for the premises began in July 1, 2009. The tenancy began as a fixed term and now continues on a month to month basis. The rental amount for this unit is currently \$690.00 payable on the first of each month. The landlord testified that she continued to hold the \$327.50.00 security deposit that the tenant paid on June 30, 2009.

The landlord has applied for an Order of Possession for unpaid rent for the month of February 2015. The landlord testified that the tenant did not pay rent of \$690.00 due on February 1, 2015. The landlord testified that she is aware the tenant is having problems waiting for his social assistance disability claim to be processed. The tenant testified that he has not been able to pay any rent while he awaits approval of his disability application. The tenant testified that he has no timeline for this process to know when he might be able to pay rent.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not pay the February 2015 rent after receiving the 10 Day Notice on February 5, 2015. The landlord testified that, as of the date of this hearing, the tenant has not paid any rent for February 2015 or March 2015. The landlord testified that she had no choice but to apply for an Order of Possession.

The landlord is also seeking a monetary award of \$1380.00 for the unpaid rent in February 2015 and March 2015. She also is seeking a monetary award of \$50.00 to reflect late fees of \$25.00 per month for February and March.

Analysis

The tenant failed to pay the February rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made 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 to vacate the premises by February 15, 2015. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I accept the uncontested evidence offered by the landlord that the tenant has paid no rent for February or March 2015. In his testimony, the tenant agreed that these rental amounts remain unpaid. I find that the landlord is entitled to receive an order for unpaid rent in February and March 2015. I am issuing the attached monetary order that includes the landlord's application for \$1380.00 in unpaid rent.

The landlord also applied for \$50.00 for late payment of rent for February and March 2015. She provided copies of the written tenancy agreement which established this late payment fee. I find that the landlord is entitled to a \$25.00 late fee for the month of February and \$25.00 late fee for the month of March totalling \$50.00.

The landlord testified that she continues to hold a security deposit of \$327.50 plus interest from June 30, 2009 to the date of this decision for this tenancy. I will allow the landlord to retain the security deposit plus any interest in partial satisfaction of the monetary award. There is no interest payable for this period.

As the landlord was successful in this application, I find the landlord is entitled to recover her filing fee.

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 does 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 landlords as follows:

Rental Arrears for February 2015	\$690.00
Rental Arrears for March 2015	690.00
Late Payment Fee for February and March (\$25 x 2)	50.00
Less Security Deposit (no interest payable)	-327.50
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$1152.50

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: March 09, 2015

Residential Tenancy Branch

