



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing by conference call and gave undisputed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenants were served with the notice of hearing package in person on February 19, 2015. The landlord stated that his wife, L.S. was a witness to the service. The landlord's wife, L.S. stated in her undisputed testimony that she witnessed the landlord, B.S. hand the notice of hearing package to the tenant, C.P. on February 19, 2015 at approximately 6:30 pm. Based upon the undisputed direct testimony of the landlord, I am satisfied that the tenants were properly served with the dispute resolution package pursuant to section 89 of the Residential Tenancy Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the security deposit?

Is the landlord entitled to recovery of the filing fee?

Background and Evidence

This tenancy began on January 1, 2015 on a fixed term tenancy of 1 year ending on January 1, 2016 as shown by the submitted copy of the signed tenancy agreement dated January 6, 2015. The monthly rent is \$1,100.00 payable on the 1st of each month and a security deposit of \$550.00 was paid.

The landlord stated that the tenant made a partial payment of \$360.00 a couple of days before February 1, 2015 leaving a balance of \$740.00 owed for the original \$1,100.00 monthly rent.

The landlord stated that the tenant was served with a 10 day notice to end tenancy issued for unpaid rent dated February 2, 2015 in person on the same date with a witness. The landlord has provided a completed proof of service document confirming service was made in this manner on February 2, 2015.

The notice shows that the tenant failed to pay rent of \$740.00 that was due on February 1, 2015 and displays an effective end of tenancy date of February 12, 2015.

The landlord stated that the tenant is still occupying the rental unit and has not made any rent payments since the notice to end tenancy was served. The landlord seeks an order of possession for unpaid rent and a monetary order for unpaid rent of \$740.00 for February 2015 and \$1,100.00 for March 2015 for loss of rental income(tenant still occupying the rental), totalling, \$1,840.00.

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.

The tenant failed to pay all of 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 on February 12, 2015. The landlord has established entitlement to an order of possession. The landlord is granted an order of possession for unpaid rent. The tenant must be served with the 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.

As for the monetary claim, the landlord has provided uncontested testimony that the tenant has unpaid rental arrears totaling \$740.00 for February 2015 and still occupies the rental unit. I find that the landlord has proven his entitlement to the rent arrears.

I find that the tenant is presently occupying the rental unit and the landlord is also entitled to compensation for the loss of rental income of \$1,100.00 as of the date of this hearing for March 2015. The landlord is entitled to a monetary order for the unpaid rent and loss of rental income for \$1,840.00.

The landlord is entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the \$550.00 security deposit in partial satisfaction of the claim and I grant a monetary order under section 67 for the balance due of \$1,340.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession for unpaid rent.

The landlord is granted a monetary order of \$1,340.00 for unpaid rent, loss of rental income and recovery of the filing fee.

The landlord may retain the security deposit.

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 17, 2015

Residential Tenancy Branch

