



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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, damage or loss 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. The teleconference scheduled for 11:00 a.m. continued until 11:15 a.m. The landlord attended and was given full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent was personally served to the tenant on February 14, 2015. The landlord gave sworn testimony that he served the tenant with the Application for Dispute Resolution hearing package on February 24, 2015 by registered mail. He provided a copy of the receipt with Canada Post tracking information. I accept that the tenant was duly served with the 10 Day Notice and the Application for Dispute Resolution hearing package. The Application for Dispute Resolution package is deemed served March 1, 2015, 5 days after its registered mailing.

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 and for damage arising out of this tenancy?

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 rental agreement for the premises began on January 1, 2015. The rental amount for this unit was established at \$775.00 payable on the first of each month. The landlord testified that he continued to hold the \$387.50 security deposit that the tenant paid on December 20, 2014. The landlord testified that the tenant continues to reside in the rental unit.

The landlord has applied for an Order of Possession for unpaid rent for the month of February. The landlord testified that the tenant did not pay rent of \$775.00 due on February 1, 2014.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on February 6, 2015. The landlord testified that the tenant did not pay the February rent after receiving the 10 Day Notice. The landlord testified that the tenant made several promises to pay the outstanding rent but did not do so over the course of February 2015. After the expiration of that 10 Day period, the landlord applied for an Order of Possession.

The landlord testified that the tenant paid \$300.00 on March 7, 2015 and \$100.00 on March 21, 2015. The landlord's sworn undisputed testimony was that, when these amounts were received, he was clear with the tenant that these payments did not re-instate his tenancy. He testified that he told the tenant to attend the dispute resolution hearing as the landlord would be seeking an Order of Possession.

The landlord is also seeking a monetary award of \$1150.00 for rental arrears of \$375.00 in February 2015 and the full unpaid rental amount of \$775.00 for March 2015.

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. The tenant did not attend this hearing to dispute the landlord's application for an Order of Possession and monetary award. 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 24, 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 an order for unpaid rent in February 2015. I accept the uncontested evidence offered by the landlord that the tenant did not pay February rent in accordance with the tenancy agreement and the *Act*. I further accept the undisputed testimony of the landlord that, in accepting partial rent payment from the tenant, he was clear that he would proceed with his application to end the tenancy. I am issuing the attached monetary order that includes the landlord's application for \$375.00 in unpaid rent for February 2015.

The monetary order for the month of March is based on the landlord's sworn testimony that the tenant still remains in the rental unit and has not paid any rental amount for March 2015. The attached monetary order includes the \$775.00 rental amount for March 2015.

The landlord testified that he continues to hold a security deposit of \$387.50 plus any interest payable from December 20, 2014 to the date of this decision for this tenancy. There is no interest payable for this period. 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 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	\$375.00
Rental Amount for March 2015	775.00
Less Security Deposit	-387.50
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$812.50

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 25, 2015

Residential Tenancy Branch

