



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAZA 200 APARTMENTS
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;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1112 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The agent is the landlord's property manager. The agent confirmed that she had full authority to act on behalf of the landlord.

The agent testified that the landlord served the tenant with the dispute resolution package on 11 March 2015 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act on 16 March 2015, the fifth day after its mailing.

The agent testified that the landlord's employee personally served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 7 February 2015. On the basis of this evidence, I am satisfied that the tenant was served with the 10 Day Notice pursuant to section 88 of the Act.

Preliminary Issue – Amendment to Landlord's Application

Paragraph 64(3)(c) allows me to amend an application for dispute resolution.

The agent asked that I exercise my discretion to amend the landlord's application to include the correct legal name of the landlord. The landlord had inadvertently provided an abbreviated name on its application. I granted this amendment as there is no undue prejudice to the tenant—it was clear from the landlord's application that the tenant's landlord was making the application.

At the hearing, the landlord asked to amend this application to reduce its monetary claim by an amount paid by the tenant. As there is obviously no prejudice to the tenant by reducing the amount that the landlord seeks, I allowed the amendment.

Issue(s) 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 in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

On 27 August 2014, the tenant and landlord entered into a tenancy agreement. The agreement purported to cover a tenancy that began 1 September 2014. Monthly rent of \$840.00 is due on the first. The agent testified that the landlord continues to hold the tenant's security deposit in the amount of \$420.00, which was collected from the tenant on 27 August 2014. Clause 7 of the tenancy agreement sets out that the tenant agreed to a late charge in the amount of \$20.00 for each late payment.

On 7 February 2015, the landlord served the 10 Day Notice to the tenant. The 10 Day Notice was dated 7 February 2015 and set out an effective date of 17 February 2015. The 10 Day Notice set out that the tenant failed to pay \$875.00 in rent that was due on 1 February 2015. The agent indicated that this was a mistake and that the tenant owed \$860.00 as of 1 February 2015.

On 7 March 2015, the tenant paid \$875.00 towards his rental arrears. The landlord issued a receipt to the tenant that the payment was received on the basis of “use and occupancy only”. The agent testified that the landlord has not received any payments since 7 March 2015.

The landlord seeks a total monetary order in the amount of \$1,755.00:

Item	Amount
Unpaid February Rent	\$840.00
Unpaid March Rent	840.00
Unpaid April Rent	840.00
Late Fees (\$20.00 x 3 Months)	60.00
Payment Received for Use and Occupancy (7 March 2015)	-875.00
Recover Late Fee	50.00
Total Monetary Order Sought	\$1,755.00

Analysis

The agent testified that tenant’s arrears as at 7 February 2015 were \$860.00. The 10 Day Notice set out that the tenant’s rent arrears as at 7 February 2015 were \$875.00.

Subsection 68(2) of the Act allows me to amend a notice given under the Act that does not comply with the Act. The landlord issues the 10 Day Notice in excess of the amount actually owing; however, the amount of the mistake is small and this mistake does not go to the substance of the 10 Day Notice. The tenant knew that the notice was being issued to him for rent arrears when the tenant failed to pay his rent due 1 February 2015. For these reasons, I am exercising my discretion to amend the 10 Day Notice to the correct amount of the tenant’s rent arrears, that is, \$860.00.

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 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. In this case, this required the tenant to vacate the premises by 17 February 2015. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The landlord did not waive enforcement of the 10 Day Notice (for example, by accepting payment beyond the effective date of the 10 Day Notice on 7 March 2015) as is indicated when the landlord issued the receipt that set out that the payment was received "for use and occupancy only".

Paragraph 7(1)(d) of the *Residential Tenancy Regulations* (the Regulations) provides that a landlord may charge an administration fee of up to \$25.00 for late payment of rent. Pursuant to subsection 7(2) a late fee charge may only be applied if the tenancy agreement provides for that fee. The tenancy agreement provides for a late fee of \$20.00 at clause 7. I find that the landlord is entitled to charge the fee. I find that the tenant has late payments on three occasions. The landlord is entitled to recover \$20.00 per occasion.

The agent has provided sworn and uncontested testimony that the tenant has arrears totaling \$1,705.00 including both rent and late fees. I find that the landlord has proven its entitlement to the rent arrears and late fees. The landlord is entitled to a monetary order for the arrears.

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

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 issue a monetary order in the landlord's favour in the amount of \$1,335.00 under the following terms:

Item	Amount
Unpaid February Rent	\$840.00
Unpaid March Rent	840.00
Unpaid April Rent	840.00
Late Fees (\$20.00 x 3 Months)	60.00
Payment Received for Use and Occupancy (7 March 2015)	-875.00
Recover Late Fee	50.00
Less Retained Security Deposit	-420.00
Total Monetary Order	\$1,335.00

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) 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 is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: April 13, 2015

Residential Tenancy Branch

