



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, CNR, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for:

- an Order of Possession for unpaid 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 applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant did not attend this hearing although the teleconference scheduled for 11:00 a.m. continued until 11:17 a.m. The landlord attended this hearing 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 March 3, 2015. The landlord gave sworn testimony that she personally served the tenant with the Application for Dispute Resolution hearing package on March 10, 2015. I accept that the tenant was duly served with the 10 Day Notice and the landlord's Application for Dispute Resolution hearing package.

Under Rule 10.1 of the Rules of Procedure,

The hearing must commence at the scheduled time unless otherwise decided by the dispute resolution officer. The dispute resolution officer may conduct the

hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, the application by the tenant was dismissed without leave to re-apply.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent and for damage or loss 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 tenancy agreement for the premises began in May 1, 2015 as a month to month agreement. On June 1, 2014, the parties entered into a one year fixed term tenancy agreement. The rental amount for this rental house is \$2950.00. The landlord testified that she continued to hold the \$1475.00 security deposit that the tenant paid on April 15, 2014. The landlord testified that the tenant continues to reside in the rental property.

The landlord has applied for an Order of Possession for unpaid rent for the month of March 2015. The landlord testified that the tenant did not pay rent of \$2950.00 due on March 1, 2015. The landlord testified that she approached the tenant to pay the outstanding rent on March 2, 2015. The landlord testified that the tenant stated his desire to remain in the unit until the end of April. The landlord testified that the tenant also stated he did not intend 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 March 2015 rent after receiving the 10 Day Notice on March 3, 2015. The landlord testified that the tenant, as of the date of this hearing, has not paid rent for March or April 2015.

The landlord applied for a 2 Day Order of Possession for unpaid rent and a monetary award of \$5000.00. She testified that the tenant owes \$2950.00 for March rent and \$2950.00 for April rent. She also sought to retain the tenant's security deposit.

Analysis

Based on the sworn and undisputed testimony of the landlord, the tenant failed to pay the March 2015 rent within five days of receiving the 10 Day Notice to End Tenancy. I find the 10 Day Notice was served to the tenant in accordance with the *Act*. The tenant filed an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. However, the tenant did not attend this hearing to testify with respect to service of his application or the substance of his application to cancel the notice to end tenancy. In accordance with section 46(5) of the *Act*, the tenant's failure to either pay the outstanding rent or to successfully apply to end the tenancy resulted in an end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by March 13, 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 March 2015. The landlord testified that the tenant remains in the rental unit as of the date of this hearing and has not paid rent for April 2015. I accept the uncontested evidence offered by the landlord that the tenant has failed to pay rent in both March and April 2015. I am issuing the attached monetary order that includes the landlord's application for \$5900.00 in unpaid rent for those two months.

The landlord testified that she continues to hold a security deposit of \$1475.00 plus interest from April 15, 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.

The landlord was required to pay \$100.00 for this application in seeking an amount over \$5000.00. Had the landlord applied for a monetary award of less than \$5,000.00, the landlord's filing fee would have been \$50.00. The landlord paid \$50.00 in making her application. As the landlord was successful in this application in obtaining a monetary award of \$5900.00 and retaining the \$1475.00 security deposit in partial satisfaction of this award, I find that the landlord is entitled to recover \$50.00 paid for this application.

Conclusion

The application by the tenant was dismissed without leave to re-apply.

I grant the landlord 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 landlord as follows:

Rental Arrears for March 2015	\$2950.00
Rental Arrears for April 2015	2950.00
Less Security Deposit	-1475.00
Filing Fee for this Application	50.00
Total Monetary Award	\$4475.00

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: April 08, 2015

Residential Tenancy Branch

