



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; 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's representative ("the landlord") testified that the tenant was served with a 10 Day Notice to End Tenancy (the "10 Day Notice") on March 10, 2015 by posting it on the tenant's door. The tenant confirmed receipt of the 10 Day Notice. Based on the testimony of both parties and pursuant to section 88 of the *Act*, I find the tenant deemed served with the 10 Day Notice on March 13, 2015, 3 days after its posting.

The landlord also testified that the tenant was served with the landlord's Application for Dispute Resolution and Notice of Hearing by registered mail on March 24, 2015. The landlord submitted receipts for the mailing, including Canada Post tracking information and a copy of tracking information indicating that the package was received. The tenant confirmed receipt of this package. Based on the evidence provided, I accept the tenant served with the landlord's Application for Dispute Resolution package in accordance with the *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 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

This tenancy began on January 1, 2015. The rental amount is \$1750.00 payable on the first of each month. The landlord testified that he continues to hold an \$875.00 security deposit paid by the tenant on December 15, 2015. The tenant continues to reside in the unit. The landlord testified that the tenant did not pay March 2015 rent. I note that with respect to this tenancy, there have been a number of Residential Tenancy matters prior to the date of this hearing.

The landlord testified that the landlord made attempts to contact the tenant to discuss the continuation of the tenancy. The landlord testified that, despite receiving notification more than once that the landlord (property management company) should be contacted regarding any matters relating to the tenancy, the tenant continued to contact the owner of the building and attempt to negotiate with the owner regarding tenancy matters.

The tenant testified that he preferred to deal with the owner of his rental unit directly but that he was aware the property management company was addressing matters at the residential premises. The tenant testified that, when he moved into the rental unit, there was furniture left by the previous tenants and the unit was not clean. He testified that he hired movers and cleaners before he moved in. He testified that the landlord had given him permission to move in to the rental unit on December 15, 2015 with no rent due until January 1, 2015 as an incentive for signing a tenancy agreement and long term lease. The tenant testified that he had no receipts for the movers or cleaners whom he hired. He also testified that he was required to take three unpaid days from work to allow the movers and cleaners into the rental unit. The tenant did not provide documentation with respect to his leave from work.

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 \$1750.00 due on March 1, 2015. The landlord testified that the tenant paid rent for April 2015 and that the tenant gave the landlord another cheque in the amount of \$335.00. The tenant testified that this cheque was intended to pay what he calculated as his portion of March rent. The tenant testified that the remaining \$1415.00 was to reflect the cost of time off from work, movers and cleaners that he incurred in December 2014.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not pay the March rent in full after receiving the 10 Day

Notice on March 13, 2015. The landlord testified that the tenant provided two cheques to the landlord after that date in the amounts of \$1650.00 and \$335.00. The landlord testified that he provided receipts indicating, "*for use and occupancy only*" to the tenant when receiving those two cheques. The landlord applied for an Order of Possession.

The landlord is also seeking a monetary award of \$1750.00 for the month of March 2015. The tenant testified that he paid \$335.00 towards March rent.

Analysis

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." In this case, the tenant had no right to deduct a portion of his rent. Further, even if the tenant were entitled to a deduction with respect to the costs he claims, the tenant provided no proof of expenses to support the deduction he made.

The tenant failed to pay the full amount of March 2015 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 March 25, 2015 (corrected effective date of the notice). 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 in the amount of \$1415.00. The landlord confirmed the tenant's testimony that he provided a cheque in the amount of \$335.00. I accept the tenant's testimony that the cheque was intended to pay the portion of March rent that he believed he was responsible to pay.

The landlord testified that he continues to hold a security deposit of \$875.00 plus interest from January 1, 2015 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 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	\$1415.00
Less Security Deposit	-875.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$590.00

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: May 04, 2015

Residential Tenancy Branch

