



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, CNR, OPL, MNR, MNSD, MNDC, 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 rent or for landlord's use pursuant to section 55; a monetary order for unpaid rent, or loss as a result of this tenancy 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 as well as a monetary order pursuant to section 67. However, the tenant did not attend although the teleconference scheduled for 11.00 a.m. continued until 11:25 a.m. With respect to the tenant's failure to attend this hearing, Rule 10.1 of the Rules of Procedure provides as follows:

The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the tenant's participation in this hearing to support his application and given the evidence provided at this hearing, **I order the tenant's application dismissed without liberty to reapply.**

The landlord attended this hearing and was given full opportunity to be heard, to present evidence and to make submissions with respect to her application. The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent was posted on the rental unit door for the tenant on July 1, 2015. The landlord gave sworn testimony that she served the tenant with the Application for Dispute Resolution hearing package and evidence by registered mail on July 27, 2015. The landlord referred to the Canada Post tracking information and receipts submitted in her materials for this hearing. I

accept that the tenant was deemed served with the 10 Day Notice on July 4, 2015 and deemed served with the Application for Dispute Resolution hearing package on August 2, 2015. The landlord testified that her application for a monetary order is solely with respect to unpaid rent.

Issues to be Decided

As the tenant failed to attend, his application is dismissed. Pursuant to section 55, is the landlord entitled to an Order of Possession?

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

Is the landlord entitled to retain all or a portion of the tenant's security deposit?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord gave evidence, in testimony and in documentary submissions that the rental agreement for the premises began on November 8, 2013. The rental amount for this unit is currently \$1500.00 payable on the first of each month. The landlord testified that she continues to hold the \$750.00 security deposit that the tenant paid on November 8, 2013.

At this hearing, the landlord made an oral application for an Order of Possession for Unpaid Rent, relying on documentary evidence submitted to support her claim that the tenant continues to reside in the rental unit and has failed to pay rent from July 2015 to the date of this hearing.

The landlord provided sworn and undisputed testimony that the tenant paid only \$750.00 towards July 2015 rent. She also testified that the tenant has paid no rent for August or September 2015. She testified that she has no evidence or notification that the tenant has entirely vacated the rental unit. The tenant submitted evidence with respect to his application to cancel the 10 Day Notice. That evidence, including information on his application, confirmed that he did not pay rent in July 2015.

The landlord submitted further evidence to support her application for an order of possession and monetary order including a copy of the residential tenancy agreement; copies of all receipts for rent payments by the tenant; as well as correspondence between the tenant and landlord regarding the rental arrears.

Analysis

Based on all of the evidence provided, including the tenant's own documentary submissions and the landlord's sworn testimony, I find the landlord has proven the tenant failed to pay July 2015 rent on July 1, 2015 as required by his tenancy agreement or after the issuance of a 10 Day Notice for Unpaid Rent on July 1, 2015. I also find, based on the undisputed sworn testimony of the landlord that the tenant continues to reside in the rental unit as of the date of this hearing and has failed to pay rent for August and September 2015.

Section 55(1) of the *Act* reads as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director **must** grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The tenant made an application to dispute the landlord's 10 Day notice to end tenancy. The tenant did not attend to support his application. The landlord made an oral request for an order of Possession. The landlord provided sufficient evidence to justify the notice to end tenancy. As I have dismissed the tenant's application, **I find the landlord is, pursuant to section 55(1), entitled to an Order of Possession.**

I find that the landlord is entitled to receive an order for unpaid rent in the amount of \$3750.00 to compensate for 2 months unpaid rent (August 2015 and September 2015) and rental arrears for half of July 2015. I accept the landlord's evidence that the tenant still resides in the rental unit, that he has provided no notice that he intends to vacate the unit and that she has no evidence that he has vacated the residence. In considering the landlord's claim, I take into consideration the fact that the tenant filed an application to dispute the end of his tenancy in July 2015. I am issuing the attached monetary order that includes the landlord's application for a total of \$3750.00 in unpaid rent for July 2015 (\$750); August 2015 (\$1500.00); and September 2015 (\$1500.00).

The landlord testified that she continues to hold a security deposit of \$750.00 plus any interest from November 8, 2013 to the date of this decision for this tenancy. There is no interest payable for this period of time. I will allow the landlord to retain the \$750.00 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 landlords as follows:

Rental Arrears for July 2015	\$750.00
Rental Arrears for August 2015	1500.00
Unpaid Rent/Arrears for September 2015	1500.00
Less Security Deposit	-750.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$3050.00

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: September 11, 2015

Residential Tenancy Branch

