



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMI REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, 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, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover its 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, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by its agent. The agent confirmed he had authority to act on behalf of the landlord.

The agent testified that the landlord served the tenant with the dispute resolution personally on 13 October 2015. The tenant confirmed he was in possession of the landlord's application for dispute resolution and notice of this hearing. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package.

The agent testified that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 30 September 2015 by posting that notice to the tenant's door. The tenant admitted receiving the 10 Day Notice. On the basis of this evidence, I am satisfied that the tenant was deemed served with the 10 Day Notice on 3 October 2015 pursuant to sections 88 and 90 of 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 and losses arising out of this tenancy? 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 parties, 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.

This tenancy began 1 January 2013. Monthly rent of \$1,050.00 is due on the first. The landlord holds a security deposit in the amount of \$525.00.

On 30 September 2015, the landlord issued the 10 Day Notice to the tenant. The 10 Day Notice was dated 30 September 2015 and set out an effective date of 11 October 2015. The 10 Day Notice set out that the tenant failed to pay \$350.00 in rent that was due on 1 September 2015.

The tenant testified that he has withheld rent amounts because of deficiencies in the rental unit. The tenant testified that he provided a receipt to the landlord for repairs to the sink that were made. The tenant testified that the repairs cost less than \$300.00.

The parties agree that the tenant has withheld \$1,750.00 in rent to date:

Item	Amount
September Rent	\$1,050.00
Payments for September	-700.00
October Rent	1,050.00
Payments for October	-700.00
November Rent	1,050.00
Payments for November	-700.00
December Rent	1,050.00
Payments for December	-350.00
Total Monetary Order Sought	\$1,750.00

Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

There are various provisions of the Act that permit a tenant to deduct amounts from rent:

- Subsection 19(2) permits a tenant to deduct amounts from rent to recover the excess amounts of a security deposit that did not comply with the Act.
- Subsection 33(7) permits a tenant to deduct amounts from rent for the costs of emergency repairs.
- Subsection 43(5) permits a tenant to deduct the amount of a rent increase which did not comply with the Act from rent.
- Subsection 51(1.1) permits a tenant to deduct one month rent where the landlord has issued a notice to end tenancy pursuant to section 49.
- Subsection 65(1) and subsection 72(2) permit a tenant to deduct rent to recover an amount awarded in an application before this Branch.

The tenant testified to various deficiencies with the rental unit. The tenant testified that he completed a repair to the kitchen sink and provided the receipt to the landlord. This repair cost less than the amount withheld for September. The tenant has not provided this receipt in evidence and did not provide evidence that any deduction was made from rent in accordance with subsection 33(7) of the Act. This tenancy was not the subject of any prior application. The Act does not permit the tenant to deduct rent for deficiencies; however, this does not prevent the tenant from making an application to this Branch for compensation for the deficiencies should he choose to do so.

On the basis of the evidence the tenant was required to pay his full rent for September.

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 13 October 2015, the corrected effective date of the 10 Day Notice. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The parties agree that the tenant has withheld rent totaling \$1,750.00. I find that the landlord has proven his entitlement to a monetary order for the rent arrears.

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.

Pursuant to paragraph 72(2)(b), the landlord may choose to withhold the monetary award from the tenant's security deposit.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,800.00 under the following terms:

Item	Amount
Unpaid September Rent	\$350.00
Unpaid October Rent	350.00
Unpaid November Rent	350.00
Unpaid December Rent	700.00
Recover Filing Fee	50.00
Total Monetary Order	\$1,800.00

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: December 10, 2015

Residential Tenancy Branch

