Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOUNDARY MANAGEMENT INC.
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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend. The landlord 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 to the tenant by posting it on his rental unit door on December 5, 2015. The landlord gave sworn testimony that her Application for Dispute Resolution hearing package (including Notice of Hearing) was sent to the tenant by registered mail to his rental unit on December 22, 2015. The landlord submitted as evidence a Canada Post receipt and tracking number, as well as the details from the tracking of the package. The details of the tracking package indicated that the package was delivered on December 28, 2015. I accept that the tenant was deemed served with the 10 Day Notice to End Tenancy on December 10, 2015 and the Application for Dispute Resolution hearing package on December 28, 2015. The landlord testified that the two subsequent evidence packages submitted to the Residential Tenancy Branch ("RTB") were also sent via registered mail to the tenant on or about January 12, 2015.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and a monetary order for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit as well as the filing fee for this application?

Background and Evidence

The landlord testified that this tenancy began on March 1, 2015 as a month to month tenancy with a rental amount of $1275.00 payable on the first of every month. The landlord submitted a copy of the residential tenancy agreement to confirm her testimony. The landlord continues to hold a $637.00 security deposit paid by the tenant at the outset of this tenancy. The landlord sought an Order of Possession and a monetary order for unpaid rent as well as retention of the security deposit.

The landlord testified that the tenant did not pay rent of $1275.00 due on November 1, 2015. She testified that a 10 Day Notice was issued to the tenant at that time. The landlord testified that the tenant did not pay rent of $1275.00 due on December 1, 2015. The landlord testified that the tenant was served with a 10 Day Notice on December 7, 2015 by posting the notice on the door of the rental unit. The landlord testified that the tenant struggled with rental payments and that the landlord attempted to allow some latitude with payments. The landlord testified that the tenant made a payment of $2550.00 on January 2, 2016 but was provided a receipt indicating, "for use and occupancy only". The landlord testified that after issuing a 10 Day Notice to End Tenancy for Unpaid Rent, the tenant did not pay the outstanding rental amount after receiving the 10 Day Notice.

As well as an Order for Possession, the landlord is also seeking a monetary award for rental arrears totalling $2550.00. The landlord also sought to retain the tenant's $637.00 security deposit towards this amount and recover the $50.00 filing fee.

Analysis

According to the undisputed sworn testimony of the landlord and her supporting materials submitted for this hearing, the tenant failed to pay the December 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 December 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 $2500.00. I accept this uncontested evidence, supported by documentary evidence offered by the landlord to show that the tenant resided in the rental unit and failed to pay rent in accordance with his tenancy agreement. I am issuing the attached monetary order that includes the landlord's application for $2500.00 in unpaid rent accrued over the course of the tenancy.

The landlord testified that he continues to hold a security deposit of $375.00 plus any interest from the outset of the tenancy to the date of this decision. There is no interest payable for this period. I will allow the landlord to retain the security deposit.

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 landlords 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 in the amount of $2550.00.

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: February 11, 2016

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Residential Tenancy Branch