



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WEST 56 PROPERTIES
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 landlord attended the hearing by conference call and gave undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the notice of hearing package was served to the tenant via Canada Post Registered Mail on January 8, 2016 and has provided the Canada Post Customer Receipt number as confirmation in her direct testimony. The landlord stated that the package was returned as unclaimed by the tenant after notice(s) of attempted service were made by Canada Post. I accept the undisputed evidence of the landlord and find that the tenant was properly served as per sections 88 and 89 of the Act. The tenant is deemed to have been served 5 days later on January 13, 2016 as per section 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 order for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings are set out below.

This tenancy began on July 1, 2014 on a fixed term tenancy ending on June 30, 2015 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated June 2, 2014. The monthly rent is \$1,050.00 payable on the 1st day of each month and a security deposit of \$525.00 was paid on June 2, 2014. The landlord has also submitted a copy of a notice of a rent increase dated August 28, 2015 which states that rent will increase from \$1,050.00 to \$1,075.00 effectively on December 1, 2015.

The landlord stated that the tenant was served with a 10 Day Notice to End Tenancy issued for Unpaid Rent (the 10 Day Notice) dated December 3, 2015 on was served to the tenant's roommate, on December 3, 2015.

The 10 Day Notice stated that the tenant failed to pay rent of \$1,075.00 that was due on December 1, 2015 and displays an effective end of tenancy date of December 13, 2015.

The landlord seeks an order of possession and a monetary order for unpaid rent of \$3,225.00 as the tenant still occupies the rental unit and has not paid any rent since the December 3, 2015 notice was served. The landlord also seeks recovery of late rent charges for each of the 3 months at \$20.00 per month for a total of \$60.00 as per section 7 of the signed tenancy agreement which provides for a \$20.00 late rent charge.

Analysis

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 December 13, 2015. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The landlord has provided sworn and uncontested testimony that the tenant has unpaid rental arrears totaling \$3,225.00 and \$60.00 for late rent charges. I find that the landlord has proven his entitlement to the rent arrears and the late rent charges. The landlord is entitled to a monetary order for the unpaid rent and late rent charges, totalling, \$3,285.00.

The landlord testified that she continues to hold the tenant's \$525.00 security deposit, plus interest, paid on June 2, 2014. Over that period, no interest is payable. Using the offsetting

provisions of section 72 of the Act, I 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 issue a monetary order in the landlord's favour in the amount of \$2,810.00 under the following terms:

Item	Amount
Unpaid December Rent	\$1,075.00
Unpaid January Rent	1,075.00
Unpaid February Rent	1,075.00
Late Rent Charges	60.00
Offset Security Deposit	-525.00
Recovery of Filing Fee	50.00
Total Monetary Order	\$2,810.00

The landlord is provided with these orders 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 these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 17, 2016

Residential Tenancy Branch

