



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL RES LTD.
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's agent, J.A. (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 tenant was served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on January 6, 2016 and has provided a copy of the Canada Post Registered Mail Customer Receipt as confirmation. I accept the undisputed affirmed evidence of the landlord and find that the tenant has been properly served by Canada Post Registered Mail on January 6, 2016 as per sections 88 and 89 of the Act. The tenant is deemed to have been served 5 days later 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.

The signed tenancy agreement stated that the monthly rent is \$715.00 payable on the 1st day of each month and that a security deposit of \$357.50 was paid.

The landlord stated that the tenant was served with the 10 Day Noticed to End Tenancy for Unpaid Rent (the 10 Day Notice) dated December 15, 2015 by Canada Post Registered Mail on December 15, 2015. The 10 Day Notice stated that the tenant failed to pay rent of \$715.00 that was due on December 1, 2015 and an effective end of tenancy date of December 31, 2015.

The landlord stated that no rent has been paid since the 10 Day Notice dated December 15, 2015 has been served. The landlord seeks an order of possession and a monetary order for unpaid rent which consists of:

\$715.00	December Rent
\$715.00	January Rent
\$715.00	February Rent
\$2,145.00	Total Rent Arrears

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 31, 2015. As that has not occurred, I find that the landlord is entitled to an order of possession effective two days after service.

The landlord has provided sworn and uncontested testimony that the tenant has unpaid rental arrears totaling \$2,145.00. I find that the landlord has proven his entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent.

The landlord testified that he continued to hold the tenant's \$357.50 security deposit, plus interest. 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 \$1,837.50 under the following terms:

Item	Amount
Unpaid December Rent	\$715.00
Unpaid January Rent	715.00
Unpaid February Rent	715.00
Recovery of Filing Fee	50.00
Offset Security Deposit	-357.50
Total Monetary Order	\$1837.50

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

