



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, 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 and for cause 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 the filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (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 December 22, 2015 and has provided the Canada Post Customer Receipt number in his direct testimony. The landlord stated that the package was returned by Canada Post as unclaimed by the tenant. I accept the undisputed affirmed testimony of the landlord and find that the tenant was properly served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on December 22, 2015 as per sections 88 and 89 of the Act. The tenant is deemed to have received the package 5 days later as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order?

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 respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings are set out below.

The landlord stated that there is no signed tenancy agreement, but that a verbal agreement was made in August of 2013. The monthly rent is \$2,100.00 payable on the 1st day of each month and the landlord holds a security deposit of \$1,050.00.

The landlord seeks an order of possession as a result of a 10 Day Notice for Unpaid Rent (the 10 Day Notice) dated December 11, 2015. The 10 Day Notice states that the tenant failed to pay rent of \$3,914.00 that was due on December 1, 2015 and an effective end of tenancy date of December 22, 2015. The landlord stated that the tenant was served with the 10 Day Notice on December 11, 2015 in person with a witness. The landlord has submitted a copy of the proof of service document as confirmation.

The landlord has provided undisputed affirmed testimony that the tenant has been in arrears of \$1,814.00 prior to December and has also failed to pay any rent since the 10 Day Notice was served on December 11, 2015 as of the date of this hearing.

The landlord seeks an order of possession and a monetary order for unpaid rent of \$5,000.00 which consists of:

\$1,814.00	Rent Arrears prior to December 2015
\$2,100.00	Unpaid December Rent.
\$2,100.00	Unpaid January Rent.
\$6,014.00	Total

It was clarified with the applicant that the monetary claim was limited to the \$5,000.00 amount filed in the application.

The landlord also seeks an order of possession as a result of a 1 Month Notice to End Tenancy issued for Cause (the 1 Month Notice) dated December 11, 2015. The 1 Month Notice states an effective end of tenancy date of January 12, 2016 and displays 3 reasons for cause:

- Tenant is repeatedly late paying rent.
- Tenant has caused extraordinary damage to the unit/site.
- Rental unit/site must be vacated to comply with a government order.

The landlord stated that the tenant was served with the 1 Month Notice on December 11, 2015 in person with a witness present. The landlord has submitted a copy of the proof of service document as confirmation.

The landlord has provided undisputed affirmed testimony that the tenant has always been late paying rent every month since his tenancy began. The landlord states that he has numerous emails to show that the tenant has been repeatedly late paying rent, but has not provided any in support of this application.

The landlord has provided undisputed affirmed testimony that the tenant has caused extraordinary damage and has photographs to prove this, but has not provided any with his documentary evidence.

The landlord has provided undisputed affirmed testimony that there is a government order that requires the rental unit/site to be vacant. The landlord has provided a copy of a local municipal government letter dated December 1, 2015 which states in part:

On 2015 November 30, Building Department staff inspected the subject property in response to a complaint of unsafe conditions. Staff observed an electrical bypass at the electrical weatherhead and notified BC Hydro. The electrical service to this building has been disconnected because of hazardous conditions.

Under section 26 of the Building Bylaw if the supply of electricity to a building has been disconnected due to a hazardous or potentially hazardous situation existing in the building, the building shall not be occupied unless a Special Safety Inspection is conducted and the work identified during the inspection is completed to insure compliance with the City Bylaws.

The landlord stated that the electrical service must be reconnected and a special safety inspection prior to reoccupying the premises.

Analysis

I accept the undisputed affirmed testimony of the landlord and find that the tenant has been properly served with the 10 Day Notice and the 1 Month Notice, both dated December 11, 2015 by personal service on December 11, 2015 with a witness.

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.

I find based upon the undisputed affirmed testimony of the landlord that the tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice dated December 11, 2015. 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 22, 2015. As that has not occurred, I find that the landlord is entitled to a two-day order of possession. The landlord will be given a formal order of possession which must be served on the tenant(s). If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this order in the Supreme Court of British Columbia.

I address the landlord's second application for an order of possession. Although an order of possession has been issued to the landlord for unpaid rent, the landlord has also made an application regarding a 1 Month Notice for cause with the following 3 reasons listed.

- Tenant is repeatedly late paying rent.
- Tenant has caused extraordinary damage to the unit/site.
- Rental unit/site must be vacated to comply with a government order.

The landlord has provided undisputed testimony that the landlord has email evidence of the tenant's email rent payments, but has failed to provide sufficient details and evidence to support this claim. The landlord has also provided undisputed affirmed testimony that the tenant has caused extraordinary damage to the unit/site, but has failed to provide sufficient details and evidence to support this claim. On this basis, I find that the landlord has failed to provide sufficient details and evidence to satisfy me on these two reasons for cause. These portions of the landlord's claims are dismissed.

The landlord has provided undisputed affirmed testimony that the rental unit/site must be vacated to comply with a government order. The landlord has submitted a copy of a local municipal letter dated December 1, 2015 which confirms that the tenant must vacate the premises to comply with City Bylaws due to safety concerns. On this basis, I find that the landlord has established the reason for cause as listed on the 1 Month Notice dated December 11, 2015. The landlord is entitled to an order of possession.

As for the landlord's monetary claim of \$5,000.00, I find on a balance of probabilities based upon the undisputed affirmed testimony of the landlord that the landlord has

provided sufficient evidence to satisfy me that there are rent arrears owing as stipulated by the landlord. The landlord is entitled to recovery of \$5,000.00 in unpaid rent.

The landlord having been successful in this application is entitled to recovery of the \$50.00 filing fee. Using the offsetting provisions of section 72, I order that the landlord retain the \$1,050.00 security deposit currently held by the landlord in partial satisfaction of the claim. The landlord is granted a monetary order for \$4,000.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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.

I issue a monetary order in the landlord's favor for \$4,000.00.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order. Should the tenant 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.

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 10, 2016

Residential Tenancy Branch

