



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BCIMC REALTY CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR OPR MNR MNDC MNSD FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for; an Order of Possession for unpaid rent pursuant to section 55; a monetary order for unpaid rent, damage or loss pursuant to section 67; an Order to be allowed to keep all or part of the security deposit pursuant to section 38; and to recover the filing fee from the landlord for the cost of this application pursuant to section 72.

The tenant applied to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice").

The tenant and the landlord's representative ("the landlord") were present and were given full opportunity to make submissions with respect to their applications. The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent was posted on the tenant's rental unit door on January 9, 2016. The landlord gave sworn testimony that the tenant was served with the landlord's Application for Dispute Resolution hearing package by registered mail on January 20, 2016. The landlord confirmed receipt of the tenant's Application for Dispute Resolution hearing package personally to her office on January 14, 2016.

Issue(s) to be Decided

Should the landlord's Notice to End Tenancy be cancelled?

If not, is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, damage or loss?

Is the landlord entitled to retain all or part of the security deposit towards any monetary award?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

This tenancy began on June 1, 2006 with a current rental amount of \$1398.00 payable on the first of each month. The landlord testified that she continued to hold the \$540.00 security deposit and \$200.00 pet damage deposit paid by the tenant on May 3, 2006.

The landlord has applied for an Order of Possession. The landlord testified that the tenant did not pay rent in January 2016 nor has the tenant paid rent in February 2016. The landlord testified that the tenant did not pay rent of \$1398.00 due on January 1, 2016 and that, on January 9, 2016, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord testified that the tenant has had ongoing difficulties in meeting her obligations regarding rent. The landlord testified that on several occasions in the past, the tenant has offered payment arrangements but that she was not able to meet those arrangements. The landlord testified that she has issued 10 Day Notices for Unpaid Rent to the tenant in the past but has not proceeded to seek an Order of Possession prior to this hearing.

As well as an order of possession, the landlord sought a monetary order for two month's rent (January and February 2016). The landlord sought to recover late fees of \$25.00 for each of the unpaid months. She provided a copy of the written tenancy agreement which established this late payment fee. The landlord sought to recover the \$50.00 filing fee for this application.

Analysis

When a tenant makes an application to cancel a notice to end tenancy the burden shifts to the landlord to justify the end of the tenancy. The tenant does not dispute that January and February 2016 rent continue to be outstanding. I find that the tenant offered genuine reasons as to why she has been unable to pay rent. As well, the tenant offered solutions by way of payment arrangements. However, the landlord sought an Order of Possession in all of the circumstances.

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." While the tenant may have had reasons for failing to pay rent, she had established no right to withhold rent and continue to reside in the rental unit.

The tenant failed to pay the January 2016 rent within five days of receiving the 10 Day Notice to End Tenancy however the tenant made an application pursuant to section 46(4) of the *Act* within five days to dispute the 10 Day Notice. The tenant has not paid rental arrears as of the date of this hearing.

Given that the undisputed evidence provided by the landlord at this hearing, **I dismiss the tenant's application to cancel the Notice to End Tenancy. The 10 Day Notice is valid. The landlord is entitled to an Order of Possession.**

I find that the landlord is also entitled to receive an order for unpaid rent for January and February 2016. I accept the uncontested evidence offered by the landlord that these months remain unpaid. I also accept the documentary evidence (residential tenancy agreement) that shows the tenant was advised of a \$25.00 late fee applicable to each late payment of rent. I am issuing the attached monetary order that includes the landlord's application for \$2796.00 in unpaid rent for January and February 2016 as well as \$50.00 in late fees.

The landlord testified that she continues to hold a security deposit of \$540.00 and a pet damage deposit of \$200.00 plus any interest from May 3, 2006 to the date of this decision for this tenancy. I will allow the landlord to retain the security deposit plus any interest in partial satisfaction of the monetary award. [\$35.94 is applicable to the security deposit and \$6.66 is applicable to the pet damage deposit for a total interest amount of \$42.60]

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 as follows:

Rental Arrears for January 2016	\$1398.00
Rental Arrears for February 2016	1398.00
Late Payment Fee for two months (\$25 x 2)	50.00
Less Security Deposit and Interest	-575.94

(\$540.00 plus \$35.94 interest)	
Less Security Deposit and Interest (\$200.00 plus \$6.66 interest)	-206.66
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$2113.40

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: March 1, 2016

Residential Tenancy Branch

