



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNDC 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, damage or loss 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 attended and 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 personally served to the tenant on October 17, 2015. The landlord gave sworn testimony that he served the tenant with his Application for Dispute Resolution hearing package on January 18, 2016 and his additional evidence package to the tenant by registered mail on February 18, 2016. I accept that the tenant was duly served with the 10 Day Notice and deemed served with the landlord's Application for Dispute Resolution hearing package on January 23, 2016.

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, damage or loss?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began April 1, 2015 as a fixed term tenancy. The tenancy was scheduled to end on December 31, 2015. The landlord testified that the tenant continues to reside in the rental unit as of the date of this hearing. The rental amount of \$850.00 was payable on the first of each month. The landlord testified that the tenant has failed to pay the rent for several months. The landlord testified that he continues to hold the tenant's \$425.00 security deposit paid at the outset of the tenancy. He testified that, while there was a payment arrangement made for the tenant to pay a pet damage deposit, she did not pay any money towards that deposit.

The landlord applied for an Order of Possession for unpaid rent for the months of October, November and December 2015 as well as January, February and March 2016. The landlord testified that he issued a 10 Day Notice to End Tenancy to tenant on October 17, 2015 after her failure to pay rent on October 1, 2015. The landlord testified that the tenant has not paid any amount of rent since that date. The landlord testified that he took exceptional efforts to attempt to provide the tenant time to pay the rent, even suggesting a payment plan but that the tenant would not discuss the matter with him. The landlord testified that the tenant did not return his calls or respond to correspondence.

The landlord provided as evidence several letters sent to the tenant over the course of this tenancy. They included a letter to indicate that he would not renew her fixed term tenancy as she had failed to pay rent. The landlord also submitted several letters requesting that the tenant contact him to discuss outstanding rent and requesting that she pay outstanding rent. Furthermore, after the end of the fixed term, the letters to the tenant explained that she was "overholding" and requested that she vacate the premises.

The landlord also submitted a copy of the residential tenancy agreement. It included the fixed term details as well as the provision for a \$25.00 late fee for each month the tenant does not pay rent on time.

As well as an Order of Possession, the landlord sought a monetary award of \$5100.00 for the months of October, November and December 2015 as well as January, February and March 2016. The landlord also sought \$25.00 for each month that the tenant did not pay her rent on time.

The landlord also sought to retain the tenant's security deposit and recover the filing fee for this application.

Analysis

The tenant failed to pay the October 2015 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not paid rent since September 2015 and continues to reside in the rental unit. 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.”

In accordance with section 46(5) of the *Act*, the tenant's failure to either dispute the 10 Day Notice or pay the rental arrears five days of receipt of the Notice to End Tenancy led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by October 30, 2015. As that has not occurred and the tenant has not attended this hearing to address this matter, 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 for the months of October, November and December 2015 as well as January, February and March 2016. I accept this uncontested evidence offered by the landlord that 6 months of rent remains unpaid. I am issuing the attached monetary order that includes the landlord's application for \$5100.00 in unpaid rent.

The landlord also applied for \$150.00 in late fees for late payment of rent on 6 months. He provided copies of the written tenancy agreement which established this late payment fee. I find that the landlord is entitled to a \$25.00 late fee for the month of October, November, December, January, February and March.

The landlord testified that he continues to hold a security deposit of \$425.00 plus any interest from March 31, 2015 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. There is no interest payable for this period.

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 landlord 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 6 months Oct Nov Dec 2015 Jan Feb Mar 2016	\$5100.00
Late Payment Fee for 6 months as above	150.00
Less Security Deposit	-425.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$4875.00

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: March 2, 2016

Residential Tenancy Branch

