



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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;
- authorization to recover their 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 tenant was served with the notice of hearing package in person on January 20, 2016 with a witness. The landlord has submitted a copy of a signed letter from the witness confirming service in this manner. 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 on January 20, 2016 in person as confirmed by the signed witness statement. The tenant is deemed to have received the package 5 days later as per section 90 of the Act.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent and recovery of the filing fee?

Are the landlords 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 parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on April 15, 2014 on a fixed term tenancy ending on April 14, 2015 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$900.00 payable on the 1st day of each month and a security deposit of \$450.00 was paid on April 1, 2014.

The landlord stated that on December 30, 2015 the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated December 30, 2015 by Canada Post Registered Mail. The landlord has provided a copy of the Canada Post Customer Receipt Tracking Number as confirmation of service. The 10 Day Notice stated that the tenant failed to pay rent of \$2,850.00 that was due on December 1, 2015 and an effective end of tenancy date of January 15, 2016.

The landlord clarified in his direct testimony that the monetary arrears are:

\$450.00	Unpaid Rent April 2015
\$900.00	Unpaid Rent August 2015
\$900.00	Unpaid Rent October 2015
\$300.00	Unpaid Rent November 2015
\$300.00	Unpaid Rent December 2015

The landlord also stated that since the 10 Day Notice dated December 30, 2015 was served the tenant has failed to pay rent for January (\$900.00), February (\$900.00) and March (\$900.00) of 2016 for rental arrears of \$2,700.00.

The landlord seeks an order of possession for unpaid rent and a monetary order for unpaid rent totalling, \$5,550.00.

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 dated December 30, 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 26 November 2014. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The landlord has provided affirmed and uncontested testimony that the tenant has unpaid rental arrears totaling \$2,850.00 based upon the 10 Day Notice and continues to not pay any rent for January, February and March for continued arrears totalling, \$2,700.00. I find that the landlord has proven his entitlement to the total rent arrears of \$5,550.00. The landlord is entitled to a monetary order for the unpaid rent.

The landlord testified that he continued to hold the tenant's \$450.00 security deposit, plus interest, paid on April 1, 2014. Over that period, no interest is payable. The landlord's application seeks to retain the security deposit, 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 \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$5,200.00 under the following terms:

Item	Amount
Unpaid Rent from 10 Day Notice	\$2,850.00
Unpaid January Rent	900.00
Unpaid February Rent	900.00
Unpaid March Rent	900.00
Offset Security Deposit	-450.00
Recover Filing Fee	100.00
Total Monetary Order	\$5,200.00

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: March 03, 2016

Residential Tenancy Branch

