



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPB OPC MND MNDC MNR O FF

Introduction

This hearing dealt with an application by the landlord 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; 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 tenant for the cost of this application pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:25 am in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 am. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The landlord’s application for an order of possession for a breach of agreement and cause were withdrawn as was the landlord’s application for an “other” remedy under the *Act*.

The landlord testified that he served the tenant with his 10 Day Notice to End Tenancy for Unpaid Rent (“10 Day Notice”) on February 16, 2016 personally. The landlord testified that he has not spoken to the tenant since that date. He testified that, since that date, the tenant has refused to open the door when he knocks or make any other type of contact with him. I find the tenant was duly served with the 10 Day Notice on February 16, 2016 based on the undisputed testimony of the landlord. The landlord testified that he served the Application for Dispute Resolution (“ADR”) to the tenant by posting it on her door on March 14, 2016. I find that the tenant was served with the landlord’s ADR in accordance with the requirements of section 89 and 90 of the *Act* on February 19, 2016 (3 days after its posting).

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 loss as a result of this tenancy? Is the landlord entitled to retain the security deposit towards any monetary order? Is the landlord entitled to recover his filing fee for this application?

Background and Evidence

The landlord gave evidence that the residential tenancy agreement began on February 1, 2016 as a month to month tenancy with a rental amount of \$750.00 payable on the first of each month. The landlord testified that, on January 22, 2016, the tenant paid a \$375.00 security deposit and \$375.00 towards the first month's rent (February 2016). The landlord testified that the tenant continues to reside in the rental unit and he continues to hold the \$375.00 security deposit paid by the tenant. The landlord sought to retain that deposit towards a monetary order for unpaid rent and also sought an Order of Possession for Unpaid Rent.

The landlord applied for an Order of Possession for unpaid rent based on the tenant's failure to pay any rent after she moved in to the rental unit. He testified that the tenant has not paid the balance of rent for February 2016; that she did not pay any amount towards March 2016 rent; and that she has not paid any rental amount towards April 2016 rent as of the date of this hearing.

The landlord testified that he has had a variety of issues with this tenant since she has moved into the rental unit basement suite. He testified that the tenant did not pay the half month's rent outstanding for February 2016 and then did not pay rent on March 1, 2016. He testified that he issued a 10 Day Notice to the tenant in person explaining that she was required to pay rent in full on the first of each month in accordance with the residential tenancy agreement. The landlord testified that the tenant did not pay the rental arrears after receiving the 10 Day Notice on March 14, 2016 or paid any other amount to the landlord as of the date of this hearing.

The landlord is also seeking a monetary award of \$1875.00 for unpaid rent; \$375.00 outstanding for the month of February 2016; \$750.00 outstanding for the month of March 2016; and \$750.00 outstanding for the month of April 2016. He sought to retain the tenant's security deposit and recover the filing fee for this application, as well.

Analysis

I accept the sworn, undisputed testimony of the landlord that the tenant failed to pay rent after the initial payment of a security deposit and half the month of February 2016. The landlord provided sufficient detail and explanation of the methods of payment and the attempts to address this matter to satisfy me that he is provided accurate testimony regarding the unpaid rent amounts.

The tenant failed to pay the February 2016 rent of \$375.00 within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions (paying the outstanding rent or disputing the notice) 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 the corrected effective date of February 26, 2016. As that has not occurred, 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 in \$1875.00 reflecting half a month's rent in February 2016; a full month's rent in March and April 2016. I accept this uncontested evidence offered by the landlord that the tenant has failed to pay rent since providing her security deposit and half month's rent at the outset of this tenancy. I also accept the evidence of the landlord that he has provided notice to the tenant that he intends to seek an Order of Possession based on her failure to pay rent. I note that the landlord described a variety of other difficulties with respect to this tenant both at this hearing and in his written submissions. However, I am issuing the attached order of possession and monetary order based on the testimony proving the tenant's failure to pay rent. With respect to the amount of rent outstanding, I issue a monetary order to the landlord that includes the landlord's application for \$1875.00 in unpaid rent.

The landlord testified that he continues to hold a security deposit of \$375.00 plus any interest from January 22, 2016 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 time period.

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 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 landlord as follows:

Rental Arrears: February (1/2), March and April 2016	\$1875.00
Less Security Deposit	-375.00
Recovery of Filing Fee for this application	100.00
Total Monetary Award	\$1600.00

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: April 26, 2016

Residential Tenancy Branch