



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:11 a.m. in order to enable the tenant to connect with this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord's representatives testified that they handed the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on May 13, 2011. The landlord's representatives testified that they handed the tenant a copy of their dispute resolution hearing package on June 9, 2011. They submitted a written statement confirming that they did so on these dates. I am satisfied that the landlord served the above documents to the tenant in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began initially as a one-year fixed term tenancy on February 1, 2008. This tenancy converted to a periodic tenancy after the expiry of the one-year term. Monthly rent is set at \$1,150.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$575.00 security deposit paid on November 8, 2007 plus interest.

The landlord's female representative at the hearing testified that the landlord issued the 10 Day Notice when the tenant did not pay all of her May 2011 rent. She testified that the tenant has not paid \$400.00 of her May 2011 rent and has not paid any portion of her June 2011 rent.

The landlord's representatives testified that the female tenant has told them that she plans to vacate the rental unit by the end of June 2011. They requested an Order of Possession to be used if she does not vacate the unit and a monetary award for the tenant's outstanding rent.

Analysis - Order of Possession

The tenant failed to pay all of the May 2011 rent within five days of receiving the 10 Day Notice. 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 within five days 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 May 23, 2011. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on 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.

Analysis – Monetary Order

Based on the undisputed evidence presented by the landlord's representatives, I issue a monetary award in the landlord's favour in the amount of \$1,550.00, an amount which compensates the landlord for \$400.00 in unpaid rent from May 2011 and \$1,150.00 for June 2011.

Since the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee for this application from the tenant.

Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit plus interest in partial satisfaction of the monetary award.

Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to 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 favour in the following terms which allows the landlord to recover unpaid rent and the filing fee for the application less the retained value of the tenant's security deposit.

Item	Amount
Unpaid May 2011 Rent	\$400.00
Unpaid June 2011 Rent	1,150.00
Less Security Deposit plus Interest (\$575.00 + 9.92 = \$584.92)	-584.92
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,015.08

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant 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.

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*.