



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNR, FF, O

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for breach of an agreement with the landlords pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72; and
- other unspecified remedies.

The tenant did not attend this hearing, although I waited until 3:10 p.m. in order to enable him to connect with this teleconference hearing scheduled for 3:00 p.m. The female landlord (the landlord) attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that on June 26, 2012 she handed the tenant a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice), a copy of which she entered into written evidence, seeking an end to this tenancy by July 30, 2012. She also entered into written evidence a copy of a signed June 28, 2012 Mutual Agreement to End a Tenancy (the Mutual Agreement) by 11:59 a.m. on July 31, 2012, a copy of which she had handed to the tenant on June 28, 2012.. The landlord also testified that she issued a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on July 4, 2012. The landlord testified that she sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on July 14, 2012. She entered into written evidence a copy of the Canada Post Tracking Number and Customer Receipt to confirm this registered mailing. I am satisfied that the landlord served these documents in accordance with the *Act*.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to recover their filing fee?

Background and Evidence

This one-year fixed term tenancy commenced on November 1, 2011. Monthly rent is set at \$1,390.00, payable in advance on the first of each month. The landlords continue to hold a \$695.00 security deposit for this tenancy paid on June 18, 2009.

After issuing the 1 Month Notice, the landlords and tenant entered into the Mutual Agreement to end this tenancy by July 31, 2012. The landlord said that the tenant refused to pay one-half of his July 2012 rent, requesting that the landlords retain the security deposit for the remaining portion of the July 2012 rent.

The landlords' application for a monetary award of \$2,095.00 included the following items:

Item	Amount
Unpaid One-Half of July 2012 Rent	\$695.00
Cleaning and Yard Maintenance	350.00
Bailiff Charges	1,000.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award Requested	\$2,095.00

The landlord testified that she has not actually incurred costs for cleaning, yard maintenance or bailiff charges as yet, but expects to incur these costs in order to restore this rental unit to its former state. The landlord also sought an Order of Possession to be used in the event that the tenant does not vacate the rental premises in accordance with the Mutual Agreement.

Analysis

Based on the undisputed evidence before me, I am satisfied that the landlords have a valid Mutual Agreement to End this tenancy by July 31, 2012. In the event that the tenant does not vacate the rental unit by July 31, 2012, I am issuing a two-day Order of Possession to the landlords to gain possession of this rental unit.

With respect to the landlords' claim for a monetary award, I note that the only reason stated on the landlords' application for this monetary award was for unpaid rent or utilities. Although the landlords included their estimates of the expenses they may incur in obtaining possession of this rental unit and restoring it to its previous condition, these are only estimates and do not reflect actual expenses at this time. As the tenant was not formally notified that the landlord was seeking a monetary award for damage or losses arising out of this tenancy and these expenses are speculative in nature at this time, I make no monetary award for cleaning, yard maintenance or bailiff charges. The landlords are at liberty to apply for a monetary award for damage or losses arising out of this tenancy once they gain possession of the rental unit.

Based on the landlords' undisputed evidence, I find that the landlords are entitled to a monetary award of \$695.00 for unpaid rent for one-half of July 2012 and the recovery of

their \$50.00 filing fee for their application. Although the landlords' application does not seek to retain the security deposit for this tenancy, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the security deposit in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period.

Conclusion

The tenant is scheduled to vacate the rental premises on the day following this hearing. In the event that this does not occur, I provide the landlords with a formal copy of an Order of Possession to take effect within 2 days of the landlords' service of this notice to the tenant. Should the tenant 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 landlords' favour in the following terms which allows the landlord to recover unpaid rent for July 2012 and the filing fee for their application and to retain the security deposit for this tenancy:

Item	Amount
Unpaid One-Half of July 2012 Rent	\$695.00
Less Security Deposit for this Tenancy	-695.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$50.00

The landlords are 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*.

Dated: July 31, 2012

Residential Tenancy Branch