



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MN

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

1. A monetary order pursuant to Section 67; and
2. An Order of Possession pursuant to Section 55;

The parties agree that the tenant was properly served with the 10 day Notice to End Tenancy by way of personal service on November 1, 2012.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. Neither party requested an adjournment or a Summons to Testify.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

Amendment of Application

The tenant testified that his surname is not the name set out in the application for dispute resolution. The landlord acknowledged that there was some confusion on the tenancy agreement as to the tenant's surname. The tenant agreed that he is the tenant and the proper party to be served with the Notice and the Application and to participate in this hearing. The parties agreed to amend the application and the Notice to correct the tenant's surname. The Application and Notice are therefore amended to reflect the tenant's proper surname.

Issue(s) to be Decided

Whether the landlord has cause to end this tenancy and receive an Order of Possession and whether the landlord is entitled to monetary order for unpaid rent.

Background and Findings***Monetary Award - Rental Arrears***

Although the tenant did not dispute the Notice to End Tenancy he disputes that he owed \$1,780.00 as claimed on the 10 day Notice. The parties agree that rent is \$700.00 per month. The tenant says he now owes \$650.00 for December 2012 rent and full rent of \$700.00 for January for a total of \$1,350.00. The tenant says he has been unable to pay his rent because he is unemployed and because the landlord threw a rock through his window and damaged his belongings.

The landlord testified that the tenant was frequently late paying his rent and he paid sums here and there. The landlord testified that at one point he obtained a job for the tenant at the rate of \$30.00 per hour and the tenant did make some lump sum payments but that job only lasted about a month and the tenant was laid off.

The tenant submitted receipts, notes and bank withdrawal slips in evidence to show the following record of payments:

Date/Notes	Amount	Amount Paid	New Amount Owing
January 3, 2012 – “Paid in full rent to January 2012”	\$3,200.00	\$3,200.00	0.00
February 1 Rent due	700.00	700.00	0.00
March 1, 2012 rent due	700.00		700.00
March 21, 2012		500.00	200.00
April 1, 2012	700.00		900.00
May 1, 2012	700.00		1,600.00
June 1, 2012	700.00		2,300.00
June 10, 2012 – tenant signed over vehicle to landlord		2,000.00	300.00
July 1, 2012 rent due	700.00		1,000.00
August 1, 2012 rent due	700.00		1,700.00

Date/Notes	Amount	Amount Paid	New Amount Owing
August 10, 2012		1,800.00	100.00 Credit
August 24, 2012		500.00	600.00 Credit
September 1, 2012 rent due	700.00		100.00
October 1, 2012 rent due	700.00		800.00
October 4, 2012		450.00	350.00
November 1, 2012 rent due	700.00		1,050.00
December 1, 2012 rent due	700.00		1,750.00
January 1, 2013 rent due	700.00		2,450.00

If I accept the tenant's calculations of rents paid since January 2012 it shows that the tenant owed \$1,050.00 as of November 1, 2012 and, as of January 1, 2013 he owes \$2,450.00. The landlord has claimed \$2,580.00 in his Application for Dispute Resolution which I find to be reasonably close to the calculation set out above. However given that the tenant's calculations are better supported by the evidence he has provided, I will accept the tenant's evidence and allow the landlord's monetary award in the sum of \$2,450.00.

Order of Possession

Section 46 of the *Residential Tenancy Act* states as follows:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I find that the landlord is entitled to an Order for Possession. There is outstanding rent and the tenant has not made application pursuant to Section 46(4)(b) to set aside the Notice to End a Residential Tenancy and the time to do so has expired. As set out in Section (5)(a) of the Act the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, that is November 10, 2012.

Security Deposit

The landlord did not seek to claim the \$350.00 security deposit paid however Section 72 of the *Residential Tenancy Act* states as follows:

Director's orders: fees and monetary orders

72 (1) The director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

In accordance with Section 72(2)(b) I will allow the landlord to retain the security deposit paid by the tenant in partial satisfaction of this claim.

Calculation of total Monetary Award

Rental Arrears	\$2,450.00
Filing Fees for the cost of this application	50.00
Less Security Deposit (no interest accrued)	-350.00
Total Monetary Award in favour of Landlord	\$2,150.00

Conclusion

The landlord is provided with a formal copy of an order of possession. This is a final and binding Order enforceable as any Order of the Supreme Court of British Columbia.

The landlord is provided with a formal copy of an order for the total monetary award as set out above. This is a final and binding Order enforceable as any Order 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: January 22, 2013

Residential Tenancy Branch

