



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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; and
- authorization to recover his 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 him to connect with this teleconference hearing scheduled for 11:00 a.m. 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 he posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on July 16, 2013. The landlord gave sworn oral testimony and written evidence that he sent the tenant a copy of his dispute resolution hearing package by registered mail on July 31, 2013. He provided a copy of the Canada Post Tracking Number and Customer Receipt to confirm this registered mailing. The landlord testified that the hearing package was returned to him as it could not be delivered. The landlord testified that he understands that the tenant is likely incarcerated at this time. I am satisfied that the landlord served the above notices to the tenant in accordance with the *Act*.

The landlord said that the tenant has left the rental unit unlocked and has left a key for the rental unit available to the landlord. The landlord testified that the tenant has left some of his belongings in the rental unit. He said that the tenant has likely abandoned the rental unit. However, in case that has not occurred, he requested an Order of Possession.

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 retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that this periodic tenancy commenced on April 29, 2013. Monthly rent is set at \$425.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$212.50 security deposit paid on April 29, 2013.

The landlord said that he issued the 10 Day Notice for unpaid rent of \$425.00 owing for July 2013. On his application for dispute resolution, the landlord noted that he was seeking unpaid rent of \$425.00 for each of July and August 2013.

Analysis

The tenant failed to pay the July 2013 rent within five days of being deemed to have received the 10 Day Notice on July 19, 2013. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received 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 his tenancy on the effective date of the notice. In this case, this required the tenant to have vacated the premises by now. 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.

As mentioned at the hearing, the landlord may also be able to obtain possession of the rental unit after waiting 24 hours from the time that he posts a notice requesting an inspection of the rental unit. Should he then conclude that the tenant has abandoned the rental unit, the landlord may take possession of the rental unit at that time.

Based on the evidence before me, I am satisfied that the landlord is entitled to a monetary award of \$425.00 for each of July and August 2013. I also allow the landlord to retain the tenant's security deposit plus applicable interest to partially offset the monetary award issued in this decision. No interest is payable over this period. As the landlord has been successful in his application, I allow him to recover his filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on 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 under the following terms, which allows the landlord to recover unpaid rent and his filing fee and to retain the tenant's security deposit:

| Item | Amount |
|---|-----------------|
| Unpaid July 2013 Rent | \$425.00 |
| Unpaid August 2013 Rent | 425.00 |
| Less Security Deposit | -212.50 |
| Recovery of Filing Fee for this Application | 50.00 |
| Total Monetary Order | \$687.50 |

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order 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: September 04, 2013

Residential Tenancy Branch

