



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR MNR FF

Introduction

This hearing was convened in response to an application by the landlord filed on August 22, 2014 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to recover the filing fee for this application - Section 72.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by *registered mail* in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing. The landlord provided proof of registered mail service.

The landlord was given opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The undisputed relevant evidence is as follows. The tenancy began on October 15, 2006. The tenant still resides in the unit. Rent - *Geared to Income* - is payable in advance on the first day of each month. The current rent at the time of filing the application was in the sum of \$1455.00 inclusive of parking. The landlord provided that as of July 15 the tenant owed arrears in rent of \$3730.00, for which the parties entered into a Repayment Agreement on July 25, 2014 on certain terms of the agreement. The tenant failed to pay the current rent for the month of August 2014 and on August 11,

2014 the landlord served the tenant with a notice to end tenancy for non-payment by regular mail, claiming that as of August 01, 2014 the tenant owed the current rent. The tenant further failed to pay all current rent owed for the month of September 2014, although the tenant ultimately made a payment of \$300.00 on September 23, 2014 which the landlord accepted for use and occupancy only. In addition, the tenant did not make any payment in the month of October 2014.

The landlord further testified that they recently re-calculated the tenant's payable rent for the current period retroactive to June 01, 2014 – reducing the tenant's rent contribution amount to \$924.00, although I do not have benefit of an adjusted Repayment Agreement between the parties. The landlord seeks for the 10 Day Notice to End for unpaid rent to be accepted as valid because the tenant did not pay any rent for August 2014. The quantum of the landlord's monetary claim is for all rent owed to date and an Order of Possession.

The landlord provided document evidence stating the tenant owed arrears of rent of \$3580.00, a Repayment Agreement stating the tenant owed arrears of rent of \$3730.00, and the 10 Day Notice reflecting the rent before it was adjusted.

Analysis

Based on the landlord's testimony and document evidence I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid and materially relevant when issued. As on recalculation the amount on the 10 Day Notice would effectively have been reduced by \$531.00, I find this change does not prejudice the tenant. The tenant did not pay any of the outstanding rent and did not apply for Dispute Resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an **Order of Possession**.

I accept the landlord's claim respecting the claimed reduction of the monthly payable rent. On this basis I find that the landlord has established a monetary claim for unpaid rent for August, September and October 2014.

I find that the landlord has not provided evidence to account for the discrepancy in their claim of the Repayment Agreement amount. I have not been provided evidence to support a *valid* Agreement reflecting any recalculation of rent. As a result, I am unable to determine what amount of arrears - before August 01, 2014 - the landlord may be entitled. As a result, **I dismiss** this portion of the landlord's claim, with leave to reapply. Should the landlord reapply, the Arbitrator assigned to the matter will be bound by any findings of this Decision which are applicable.

As the landlord was in part successful in their claim they are entitled to recover their filing fee.

Calculation for Monetary Order

Unpaid rent for August 2014	\$924.00
Unpaid rent for September 2014	924.00
<i>Tenant's payment September 23, 2014</i>	<i>-300.00</i>
Unpaid rent for October 2014	924.00
Filing Fee for this application	50.00
Total Monetary Award	\$2522.00

Conclusion

I grant an Order of Possession to the landlord **effective 2 days** from the day it is served. The tenant must be served with this Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I grant the landlord an Order under Section 67 of the Act for the amount of **\$2522.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

The balance of the landlord's claim is **dismissed**, with leave to reapply.

This Decision is final and binding on both parties.

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: October 20, 2014

Residential Tenancy Branch

