



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR, MNSD, 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 the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although the hearing lasted approximately 13 minutes in length. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony and to make submissions.

The landlord gave sworn testimony that he personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, dated November 4, 2014 ("10 Day Notice"), on November 4, 2014. The landlord attached a proof of service with a witness signature from MR, the resident manager of the building ("MR"), in his application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the 10 Day Notice on November 4, 2014.

The landlord testified that he personally served the tenant with the Application for Dispute Resolution hearing package ("Application") on November 15, 2014. The landlord testified that MR witnessed this service. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was served with the Application on November 15, 2014.

During the hearing, the landlord amended his application to correct the spelling of the tenant's first name. I amended his application in accordance with section 64(3)(c) of the *Act*, as I find that it does not prejudice the tenant to do so. The correct spelling of the tenant's first name is now reflected on the front page of this decision.

Issues 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 arising out of this tenancy?

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 began on March 1, 2014. Monthly rent in the amount of \$930.00 is payable on the first day of each month. A security deposit of \$465.00 was paid by the tenant for this tenancy and the landlord continues to retain this deposit. Another tenant, GM, previously vacated this rental unit on August 13, 2014 and the landlord is not seeking any orders against him. The tenant continues to reside in the rental unit.

The landlord testified that the 10 Day Notice, indicating that rent in the amount of \$930.00 was due on November 1, 2014, is unpaid by the tenant. The landlord further indicated that the rent for December 2014, in the amount of \$930.00, is also unpaid by the tenant. The landlord confirmed that no rent payments have been made by the tenant since the 10 Day Notice was served upon him. The landlord is seeking \$1,860.00 for November and December 2014 unpaid rent.

The landlord is seeking to retain all or a portion of the tenant's security deposit of \$465.00, which he continues to hold.

The landlord is also seeking to recover the filing fee of \$50.00 for his Application from the tenant.

Analysis

The tenant failed to pay the full rent for November 2014 within five days of receiving the 10 Day Notice. The tenant has not made an 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 failure of the tenant to take either of these actions within five days led to the end of this tenancy on November 14, 2014, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by November 14, 2014. As this has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

The landlord provided undisputed evidence that the tenant failed to pay rent for November and December 2014. The full monthly rent of \$930.00 for November and December 2014, totals

\$1,860.00. Therefore, I find that the landlord is entitled to rental arrears outstanding in the amount of \$1,860.00 against the tenant.

The landlord testified that he continues to hold the tenant's security deposit of \$465.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for his Application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant or anyone on the premises 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 amount of \$1,445.00 against the tenant as follows:

Item	Amount
November 2014 Rent	\$930.00
December 2014 Rent	930.00
Less Security Deposit	-465.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$1,445.00

The landlord is provided with a monetary order in the amount of \$1,445.00 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: December 19, 2014

Residential Tenancy Branch

