



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPR, MNR, MNSD, MNDC, FF

Introduction

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were personally served on the Tenant on August 14, 2008. These documents are deemed to have been served in accordance with section 89 of the *Act*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)* or tenancy agreement; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Act*.

The Agent for the Landlord withdrew the application for an Order of Possession at the beginning of the hearing, due to the fact that the Tenant vacated the rental unit on August 31, 2008.

Background and Evidence

The Tenant paid a security deposit of \$292.50 on January 17, 2006 and is required to pay monthly rent in the amount of \$608.00. The Agent for the Landlord stated that their written tenancy agreement stipulates that a tenant must pay a \$75.00 fee whenever they are late paying their rent.

The Agent for the Landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of August 12, 2008, was posted on the front door of the rental unit on August 02, 2008. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$683.00 within five days after the Tenant is assumed to have received the Notice. The Notice also indicated that the

Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental by the date set out in the Notice unless the Tenant files an Application for Dispute Resolution within five days.

The Agent for the Landlord stated that the Tenant still owes \$608.00 in rent from August of 2008. The Agent stated that the Tenant also owes \$75.00 for paying his rent late in August.

Analysis

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the Act, I find that the Tenant accepted that the tenancy has ended.

In the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$608.00 for August of 2008. The Landlord applied for compensation for a late payment fee of \$75.00 for paying the rent late in August.

Section 7(1)(d) of the Regulation stipulates that a landlord can charge a fee of not more than \$25.00 for a late rent payment. Section 7(2) of the Regulation stipulates that a landlord can only charge this fee if the tenancy agreement provides for this fee.

The Agent for the Landlord stated that the tenancy agreement provides for a \$75.00 late fee, which is not authorized by the Regulation. I find that condition of the tenancy agreement regarding late fees does not comply with the legislation, and therefore I dismiss the Landlord's application for a monetary Order for late payment of fees. To be enforceable, the tenancy agreement must stipulate that the Tenant agrees to a late payment fee of \$25.00.

I find that the Landlords application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

I find that the Landlord is entitled to retain the Tenant's security deposit plus interest, in the amount of \$301.42, in partial satisfaction of the monetary claim.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$658.00, which is comprised on \$608.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord will

be retaining the Tenant's security deposit plus interest, in the amount of \$301.42, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$356.58. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Date of Decision: September 11, 2008
