



Dispute Resolution Services

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

Decision

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. The Agent for the Landlord withdrew the application for an Order of Possession, as the Tenant vacated the rental unit on December 28, 2008.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the address noted on the Application, on December 22, 2008. A tracking number was provided. The Canada Post website shows the mail was returned to the sender, as the recipient "not located at address provided". These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (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 a monetary Order for unpaid rent; a monetary Order for a late fee of \$20.00; 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, 67, and 72 of the *Act*.

Background and Evidence

The Agent for the Landlord stated that this tenancy began on February 01, 2008 and ended on December 28, 2008. She stated that the Tenant was required to pay monthly rent of \$795.00, and that she paid a security deposit of \$397.50 on January 19, 2008.

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 December 12, 2008, was posted on the front door of the rental unit on December 02, 2008. The Notice 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 pays the outstanding rent or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice.

The Agent for the Landlord stated that the Tenant still owes \$795.00 in rent from December of 2008.

The Agent for the Landlord stated that the Tenant also owes a late fee of \$20.00 for paying her rent late in December. Although the Agent did not provide a copy of the tenancy agreement, the Agent quoted section 6(b) of the tenancy agreement, in which the Tenant agreed to pay a late fee of \$20.00 whenever she is late paying her rent.

Analysis

In the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$795.00 for December of 2008, and that the Landlord is entitled to compensation in that amount.

In the absence of evidence to the contrary, I find that the Tenant agreed, in writing, to pay a late fee of \$20.00 whenever she was late with her rent. On this basis, I find that the Landlord is entitled to recover a late fee of \$20.00 from December of 2008.

I find that the Landlord's 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 \$403.17, in partial satisfaction of the monetary claim.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$865.00, which is comprised of \$795.00 in unpaid rent, a \$20.00 late fee, 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 \$403.17, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$461.83. 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: January 26, 2009