



Dispute Resolution Services

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

Decision

Dispute Codes: OPR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an order of possession, a monetary order for unpaid rent, compensation for late payment of rent, retention of the security deposit in partial satisfaction of the claim, and recovery of the filing fee. The landlord participated in the hearing and gave affirmed testimony. Despite being served in person by the landlord on January 8, 2009 with the application for dispute resolution and notice of hearing, the tenant did not attend.

Issues to be Decided

- Whether the landlord is entitled to an order of possession
- Whether the landlord is entitled to a monetary order under the *Act*

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began on or about June 27, 2006. Since July 2007 rent in the amount of \$700.00 is payable in advance on the first day of each month. A security deposit of \$325.00 was collected on January 30, 2007.

The tenant failed to pay all rent due at the first of the month for September, October, November and December 2008. Accordingly, the landlord served the tenant with a 10 day notice to end tenancy for unpaid rent. Subsequently, while the tenant made late payment of rent for December, he further failed to pay rent for the month of January 2009.

The landlord submitted into evidence a copy of the 10 day notice dated December 11, 2008 which was served by posting on the tenant's door that same day.

In addition to unpaid rent, the landlord seeks recovery of fees for late payment of rent in the total amount of \$600.00 (\$50.00 per occasion x 12)

Analysis

Based on the documentary evidence and undisputed testimony of the landlord, I find on a balance of probabilities that the tenant was served with the application for dispute resolution and notice of hearing, as well as the 10 day notice to end tenancy for unpaid rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply to dispute the notice. The tenant is therefore conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the notice which was December 21, 2008. Further to this and as previously noted, the tenant vacated the unit on January 17, 2009. I therefore find that the landlord is entitled to an order of possession.

As for the monetary order, I find the landlord has established a claim for \$2,440.00. This is comprised of \$290.00 (unpaid rent for September 2008), \$700.00 (unpaid rent for October 2008), \$700.00 (unpaid rent for November 2008), \$700.00 (unpaid rent for January 2009) and recovery of the \$50.00 filing fee for this application. I order that the landlord retain the security deposit of \$325.00 plus interest of \$9.44, and I grant the landlord a monetary order under section 67 of the *Act* for the balance due of \$2,105.56 (\$2,440.00 - \$334.44).

In relation to the landlord's application to recover 12 x \$50.00 fees for late payment of rent, section 7 of the Residential Tenancy Regulation speaks to **Non-refundable fees charged by landlord**. In particular, section 7(1)(d) states:

7(1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent;

Further, however, section 7(2) of the Residential Tenancy Regulation states:

7(2) A landlord must not charge the fee prescribed in paragraph (1)(d) or (e) unless the tenancy agreement provides for that fee.

In the instant case, while the tenancy agreement provides for "a \$50.00 N.S.F. charge for any returned cheques," there is no provision in the agreement for the assessment of a fee for simple late payment of rent. Accordingly, I dismiss this aspect of the landlord's application.

Conclusion

I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service upon the tenant. This order must be served on the tenant. 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 hereby grant the landlord a monetary order under section 67 of the *Act* for **\$2,105.56**. This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: February 9, 2009

Dispute Resolution Officer